1928

GENERAL AND REVENUE SECRETARIAT.

(Income Tax

NOTES.

File No. 13-28

FILE HEADING.

Levy of income tax on the profits of the Broad gauge line of the M & S. M. Ry within Mysore limits.

From

No. Dated Receipt

Diary No. Enclos. Spare Copies. Serial No.

BRIEF ABSTRACT OF LETTER.

NOTES AND ORDERS.

NOTES—First Sheet.

Levy of Income Tax on the profits of the --- Broad Guage system of the Madras and Southern Marahttah Railway Company within the Mysore --- Territory

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The question of this levy was taken up for consideration as soon as the Mysore Income Tax Regulation was introduced in 1920. The correspondence relating to the subject was being dealt with in the Revenue Branch before the transfer of the Income Tax Section work to the Financial Branch in July 1922. The Branch Diary of the time shows that the Commissioner's letter No.O.C.293/20-21 addressed to Government on 18th December 1920 in the matter was transferred to the Confidential Branch evidently for being dealt with there with reference to the political aspect of the question. It is not known how the question was disposed of as the file has not come back to the Income Tax Section since the Income Tax work was transferred to this branch, and the papers are newhere forthcoming. All efforts made to trace them or even to know their whereabouts have proved unsuccessful as already reported in the routine notes below.

2. To avoid further delay in the settlement of this question, the papers of the Income Tax Commissioner's Office relating to the case were obtained at the instance of the Revenue Secretary. These papers which are placed below show that the question has not yet been finally settled and is still pending with Government (vide Commissioner's letter No.

notified. This letter is not available in the file of papers received from the Income Tax Commissioner's Office. The Railway Secretariat has been requested to obtain by wire a copy of this letter and this will be put up as soon as it is received. Even without it the exact circumstances of the transfer of the lands referred to may be gathered from the available records. 5. When the Bangalore Branch of the Madras Railway was constructed, the lands required for it in the Mysore Territories were given to the Company free by the Mysore Administration in the days when it was carried on by the Chief Commissioner of Mysore. When the resumption of the administration by the Ruling Family of Mysore was under consideration, the Government of India thought it necessary in view of the forthcoming resumption, to arrange for the transfer of full jurisdiction over the lands in the State occupied by the Madras- Bangalore Railway line, short of Sovereignty rights, to the British Government. (vide page 2 of the Printed papers relating to Railway jurisdiction and also pages 5 & 6) It was at the same time contemplated to include a clause in the Instrument of Transfer, which was then being drafted to give effect to the Rendition proposals, to secure this right to the British Government not only in respect of lands previously given over for Railway purposes but also in respect of lands to be given thereafter. Attention is invited to clause 15 of the Instrument of Transfer and clause 14 of the Mysore Treaty which has since superseded the Instrument of Transfer, in which the contemplated arrangements have been provided for.

No.O.C.293 dated the 18th December 1920 and the remind to it dated 12th July 1920.

3. In the Income Tax Commissioner's letter of 18th December 1920, the Commissioner reported to Government that the Agent of the Madras and Southern Maharahtta Railway Company repudiated the liability of the --- Company to pay income tax in the absence of the Special Orders of the Government of India as the Secretary of State for India in Council has full and exclusive jurisdiction of every kind on the broad-gauge line.

4 From the letter addressed to the Income Tax -- Commissioner by the Agent of the Company in the matter (vide letter No.1151/20-3 dated the 14th December -- 1920) it is seen that the ground on which payment of Mysore Income Tax is sought to be evaded is that the lands lying within the Mysore State occupied by the Bangalore branch of the old Madras Railway was transferred to the Secretary of State for India in Council "with full jurisdiction of every kind over the lands lying within the State". It was evidently with a view to examine the validity of this contention that the connected Secretariat file reported missing was --- transferred to the Chief Secretariat (Confidential Branch). In the absence of the connected file, the question may be dealt with now from the available -- papers. There is reference in the Agent's letter to the Income Tax Commissioner to a letter of the -- Railway Board No.1792-Ry. of 9th June 1913 in which the matter referred to is said to have been notified

6. The notification transferring the lands to the jurisdiction of the Government of India is printed on pages 5 and 6 of the printed collection of papers relating to jurisdiction placed in the file. The notificatio purports to transfer the lands occupied by the Madras Railway within the State with "full jurisdiction short o sovereignty rights absolutely to the British Government". Reading this with the clause of the Instrument of Transfer and of the Treaty referred to above which should be taken as superseding the old Notification of 5th July 1877, and it will be seen that the jurisdiction reserved to the Government of India both in respect of lands previously transferred and those to be thereafter --- transferred was what is specified in the Treaty as "plenary jurisdiction". The word "plenary" means in ordinary language "full" "Complete", "entire" or "absolute In law the term is applied to an ordinary suit through all its gradations and formal steps and is opposed to what is known as "summary". The term seems therefore to have reference to causes in courts. That this is what was intended is clear from the Notification issued in 1896 (vide pages 54 & 55 of the printed Collection) by the Government of India themselves in respect of lands occupied by the Mysore State Railways transferred later on to the working of the M & S.M. Railway Company and the previous correspondence relating to it. These lands stand in clause 14 of the Treaty in the same category as those given previous to the Rendition (vide item (1) of the Railway lines enumerated in the preamble of the Notification referred to above). The transfer of jurisdiction

jurisdiction contemplated in this notification is categorically mentioned as applicable in respect only of the following:-

(1) Criminal Courts

(2) Civil Courts.

(3) Police.

7. From this it follows that the "plenary" jurisdiction transferred in respect of the Bangalore-Bisanatham -- Section of the Bangalore-Madras Railway can also be only in respect of the above three items. In these circumstances, the only feasible interpretation to the Notification of 1877. is that jurisdiction over the lands on the Bangalore-Bisanatham Section of the Broad Gauge line transferred to the British Government is only in respect of Criminal and Civil Courts and of the Police administration and that the sovereignty rights of His Highness to enforce the fiscal laws over the tract covered by the Railway is not in any way affected. Such transfer of jurisdiction to the Government of India made purely on grounds of administrative convenience, as set forth throughtout in the whole correspondence contained in the printed papers -- affords no justification to the Railway Company to -- claim exemption from the operation of the Revenue or Fiscal laws of the State (of which the Income Tax Regulation is one). It is strange therefore that the Agent has urged this as an excuse for not paying income-tax which is payable by the Company under Sections 4 and 10 (4) of the Mysore Income Tax Regulation.

This has been accepted by the Company which pays tax on profits earned on State Railway lines worked by it. The jurisdiction on the lands covered by these lines has also been transferred in the same manner as over the Bangalore-Bisanath line

8 In this connection it may be useful to compare the wording of the notification relating to the transfer of lands for Railway purposes with that in the Deed of assignment of the Civil and Military Station of Bangalore In this deed His Highness has agreed to assign "free of charge to the exclusive management of the British Government" and also to renounce "the exercise of all jurisdiction in the lands so assigned".

9. There is no reference in the terms of the Treaty relating to the assignment of lands for railway purposes to any such "exclusive management" or to the renouncement of the exercise of all jurisdiction in the lands" but the condition of assignment of railway lands is limited only to the transfer of plenery jurisdiction which is confined as pointed out above, only to jurisdiction is respect of Civil and Criminal Courts and in respect of Police jurisdiction. This difference in the terms of the documents relating to the cession of lands for Railway purposes and the assignment of the Civil and Military Station is --- significant and supports the view taken above.

10 It may in this connection be also noted that even in respect of the Civil and Military Station which has been assigned on such absolute conditions, the right to receive the surplus revenues of the Tract has been recognised and the surplus is also being paid to us. There can therefore be no doubt whatever as regards the liability to income tax of the income of the Railway Company ~~earning profits on~~ from business carried on within the limits of the State.

In the Income Tax Commissioner's D.O.letter of

L

August 1920 to the Chief Secretary, it is stated that the Agent has agreed to send returns of pay drawn b the employees of the Railway Company residing withi the limits of the territories of His Highness the Maharaja. It is understood that this arrangement i now in force and returns are also being sent. This fact also goes against the contention of the Company that it is not liable to income tax in ~~exxx~~ respect of its ~~exxer~~ own income.

/2 In view of all that is stated above it seems necessary to request the Commissioner of Income Tax to proceed at once to assess the income of the -- Company on its income from the broad gauge lines within the State.

/3 If it is not considered desirable to adopt this procedure at once it is for consideration -- whether the Residency may be addressed in the -- ~~exxter~~ first instance before proceeding to take any action for assessment of the Company's income.

Rao Sahib

MR 26/6/25

14. The railway lands relating to the Bangalore-Bisanatham Section of the Broad Gauge Railway line to Madras were given to the Madras Railway Company in 1858 when the administration of the State was in the hands of the British Commission. In 1877 when the restoration of the State to the Mysore Ruling Family was under consideration, the Government of India took up for consideration the conditions on which these lands are to be held and also oth

Serial No.

lands which may be required by the British Governme for railway purposes in Mysore. The Resolution of Government of India on the subject dated 27th Nover 1877 is contained on page 5 of printed collection p up. It was provided that full jurisdiction in suc railway lands short of sovereignty rights should be ceded absolutely to the British Government. The q tion is: what is meant by the term "full jurisdict short of sovereignty right"?. The Government of I India Notification dated 5th February 1883 - page 6 the printed collection clearly explains this. What was contemplated was the assumption by the Governme of India of jurisdiction in respect of Civil and Cr minal Courts and also the Police. The terms of the Resolution of the 27th November 1877 clearly show that fiscal jurisdiction was not ceded or acquired. fiscal jurisdiction also was intended to be ceded there was no necessity for clause (111) of the Reso tion which specifically lays down that no transit o other duties on through goods shall be levied by th Mysore State.

15 The provision in the Instrument of Transfer, a later on in the Treaty also supports the view expre above. The phraseology used in the Instrument of - Transfer is a little different. The term used is plenary jurisdiction and what is meant by plenary jurisdiction will be apparent from the Government of India Notification of 1896, printed on page 54 of th printed collection. Provision is made in the Notif cation for the exercise of civil and criminal jurisd tion and police powers. There is no reference agai to fiscal jurisdiction.

16. From the foregoing facts it is apparent that scal jurisdiction over railway lands jurisdiction er which has been given to the Government of India ill remains with the Government of Mysore.

17. It will be seen from the Notification of the 6th bruary 1896 that all railway lands, jurisdiction er which has been ceded to the Government of India nd on the same footing; there is no distinction ween lands relating to the State owned railways and nds relating to the lines owned by the M.&.S.M.Rail- Co., In regard to the income earned by the M.&. Railway Co., as the lessees of the State Railway, ometax is now paid. It therefore necessarily - lows that the M.&.S.M.Railway Co., has perforce to incometax on that portion of their income which ates to the Bangalore-Bisanatham Section.

18. The M.&.S.M.Railway Coy., have tacitly admitted rights of the Government of Mysore to levy income- on persons residing in railway lands of the - galore-Bisanatham Section. I consulted the Deputy missioner of Incometax informally and from the atements furnished to him by the Auditor of the .S.M.Railway Coy., which he showed me, it is found at the Auditor is recovering incometax from the ployees of the Coy., resident in the Bangalore-Bisa- tham line and remitting it to the Deputy Commissioner. is obvious that the Incometax Authorities of the vernment of India have not attempted to make any llections from this line; for then the Auditor would have sent the incometax to the Deputy Commissioner Incometax. If private persons resident in the - ay lands on the Bangalore-Bisanatham Section

Page 54 J The Printed collection

10

D 1096

General and Revenue Secretariat. | File No. | of 19

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are liable to pay incometax to the Mysore Government the M.&.S.M.Railway Co., which is only a private company are bound to pay incometax in respect of their income relating to this line.

In view of all these circumstances it appears to be quite justifiable to proceed to assess the Railway Co., to incometax. If, however, it is considered necessary that the Resident should be addressed a draft letter will be put up.

10425-
27-6-25-

27.6

21 It will be seen from the [illegible] that the Comm of Income Tax wrote to Gir about [illegible] but no action was taken & the file is sent to the Inspr

22 This late assts for recovd ass^ts for 23-24 (as it has to be ordered by 30th June 25), & as we have lost the ass^ts for several years on account of the refusal of the Co^y to submit returns, we might possibly be able to get credit

NOTE—Contn. Sheet

Serial No.

10425.

from the Govt of India for action
is already carried & there. & for these
& other reasons, it does appear to be
best to adhere the Residency on
the lines indicated in
the Asst & Ld Secy's notes.

23 The Asst Secy says that
separate accounts are kept for
the Residency & the Cantonment but
that the pro rata basis
the principle is accepted.

Submitting a draft letter
& plan put up my notes (Enclosed from the file)
requesting immediate allotment
of these matters.

28/6/25.

K. Ghosh

24 I have exhaustively dealt with the question
relating to the internal sovereign rights
of H. H. the Nizam over the territory
ceded to the Railway for civil & criminal
jurisdiction & shown that the internal
rights of His Highness except making
laws, administering justice (civil & criminal),
levying taxes over the territory occupied
by Railway Company & the Govt of H. H.
[illegible] my opinion
[illegible] after explaining [illegible] in detail from
decisions of Privy Council & Ld attached

DEWAN'S C...
RECD. ON 30. JUN. 1925
Regd. No. 962a...

NOTE—Contn. Sheet

General and Revenue Secretariat.

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Serial No.

A

B.

ontn. Sheet

Serial No.

8

Alternate drafts submitted

VN 17/7 The drafts put up need not be alternative. It seems desirable to issue both the drafts in view of the orders of the 2nd member in his minute of 28.6.25 (paras 21 to 23 above) and of the Dewan's minute of 9.7.25 above.

As there appears to be no doubt as regards our right to levy the tax, we may proceed with the assessment for the current & the previous years & we may address the Residency as regards the refunds to be given in the Sharing of the income included in the By Income Income tax received during the previous four years of the issue of the draft letter to the Residency as regards previous years. This is approved; it will be issued before the issue with reference to the Company's accounts for these years whether these profits were actually realised or not.

Rev Secy 28) The Residency draft is 20/7/25 as under. Please put up for signature - with the papers and bring up also the

NOTE—Contn. Sheet

Serial No. 32

(Fair draft as revised Sitbd. Copy of this W 24/7 forwarded Govt to the Govt for necessary action 25/3/25 Rev Secy)

33 P.C. Fair draft papers on which I have made many Corrections - Copy sent (B.S.)

Perusal: Decision minuted on 9.7.25.

When the file was submitted to the Member and the Decision for Copy of the Rly Board's letter of 9th June 1913 was first asked for. It has since been received from the Rly Secretariat. Please see Flag R. On perusal of the Schedule attached to the Notification referred to in the letter shows that it includes the State owned sections of the Nagpur Sangor System. Apparently the Rly Admn has failed to notice this fact.

34 In view of this, it does not appear to be desirable for us to frame the question of jurisdiction, the system etc. Perhaps it would be enough if a draft on the lines of that put up ~~is to be brought~~ is issued. For orders

II Mr 35 I agree to this

Sheet

Serial No.

draft issued after this Govt has
& Secy & after adding a sentence
of the opinion of the Govt that the
case is similar to the Govt of India Secy this
Govt, & we see no objection to Whether
such a sentence should be added or subtracted
from the draft letter is a matter
also for A.G. Secy's opinion.
I also wish to note also that
when the papers are received back
with A.G.'s orders or any minutes,
they may be sent back to me
for perusal as per standing orders.

K.E. 6/10/25

A.G. Secy with
Compts

I would suggest the following paragraph at the end of the draft to be added.

From the correspondence between the Govt of India & the Govt of Hyd leading up to the cession of jurisdiction & the limits of jurisdiction actually conceded by H.H. the Nizam over the areas occupied by the Railways in Hyderabad State, it seems (the position may well be maintained) that the internal rights of sovereignty of H.H. the Nizam's Govt except making laws & administering justice (civil & criminal), over the area are left in tact & that this right extends to levying taxes in connection with the Railway Co. The grant of surplus lands from the assigned tract & in other instances also clearly indicate the recognition of this right.

12

NOTE—Contn. Sheet

G.R.S. III-2] 16

File No. (16) 98/K of 19

WD 2119—GPB—

General and
Secreta

Serial No.

REVENUE
-7 AUG. 1925
SECRETARY.

1177/8/8

NOTE—Contn. Sheet

Serial No

40.

Subd. with the draft reply as directed.

REVENUE
10 AUG. 1925
SECRETARY.

1324
12/8

14

Contn. Sheet

Serial No.

46 Rescr.

The Report of the interview
referred from the Revenue
Secretariat regarding the
Representation

This was read to
British. I leam
whether any
add or modify
to D.F.N.
Draft ready

48. There is nothing in the report of
interview which relates to this
question. The question under consideration
in this file is whether the assessment
of the profits accrued to the Mysore Co
on this traffic on this Section
of railway traversing in Mysore
and Cases under the general provisions
of the law without involving any of the
points now under discussion as regards
the principles of reciprocity arrangements
to be arrived at between Mysore and
British India. The file may therefore
be submitted to Diwan as ordered
by 2nd Member in Note 45 above.

x Copy received in Branch pending up for reference. The members orders on the Diwan's memo on this Copy & on the other Copy are being separately attended to. This Case will be worked up & finally with the Report on it

NOTE—Cont'd. S[illegible]

Serial No

1710/21/8

DEWAN'S OFFICE,
RECD. ON 21 AUG. 1925
Reg. No 1680

with the D.F.N.
Rev Secy)

MAR mail 20/8/25

Dewan Secy 49 yy.
II[nd] member) 50. The most important point to be settled is whether the profits of the B.C. line of the M.S.N.Co. are assessable to Travancore I.T. and after this is settled, as including the income and the rate of assessment will then arise for consideration later.

P.S. K

(50 Final Note Signed by the Member is 21.8.25: placed in the file.

K 21/8

C.S.C. 21/8 51. Dewan) W.i.n D.F.N. Rev Secy)

4/09 mg

15

(20)

Submitted to His Highness.

5 I beg to submit for His Highness' gracious approval the draft letter to the Residency on the subject of levy of income tax on the profits of the broad gauge line of the Madras and Southern Mahratta Railway Company lying within the limits of Mysore territory.

A.R. Banerji

Bangalore,
29th August 1925.

S.N.

(21)

Final Note by the Second Member of Council.

Subject:—

Levy of incometax on the profits of the Broad Gauge line of the M.& S.M. Railway Company, lying within the limits of Mysore territory.

53 The accompanying papers relate to the levy of incometax on the profits of the Broad Gauge line of the M.& S.M. Railway Company lying within the limits of Mysore territory.

54 After the introduction of the Incometax Regulation in Mysore i 1920, the Commissioner of Incometax (Mr. K. Matthan) corresponded wit the Agent of the M.& S.M. Railway Company in the matter of the levy o incometax on the profits of the Company accruing in Mysore. The Agen agreed to pay tax on the profits earned by the Company from the State lines worked by them, but repudiated liability to pay tax on the Bangalore-Bisanatham Section of the Madras-Bangalore Railway, on the ground that no separate accounts were maintained for the portion of Broad Gauge line traversing over Mysore territory. He also suggest that special orders of the Government of India might be obtained, and referred to the Railway Board's letter of the 9th June 1913 in which was notified that the Secretary of State for India in Council has ful and exclusive jurisdiction of every kind over all the lands lying wit in the (Indian) States specified in the schedule thereto annexed whic are occupied by the railways mentioned in the said schedule, of which the Bangalore-Bisanatham railway was one. This letter and subsequen reminder sent by me as Incometax Commissioner seem to have been lost sight of in the Secretariat.

55 The Secretariat notes in the file fully discuss the points raised in the M.& S.M. Railway Company Agent's letter. That no sepa rate accounts are kept for the portion of profits attributable to bu ness in Mysore can be no excuse for not paying the tax. The Company is bound by law to maintain such accounts as will enable them to ren der the return of income due to the Mysore Incometax Department. T

Railway Board's letter referred to does not support the Agent's contention, as the Bangalore-Bisanatham Section of the Broad Gauge line is one of the many railway lines traversing in Mysore in respect of which jurisdiction for certain purposes has been ceded and the Company has been paying tax on the profits of all the other lines included in the schedule attached to the Railway Board's letter. The opinion of the Local and Legislative Secretary which has also been obtained is that the internal rights of the Government of His Highness are left unaffected over the territory ceded for railway purposes and that the Company cannot therefore claim exemption from Mysore Incometax on the grounds urged.

56 In these circumstances, it has been decided to issue instructions to the Commissioner of Incometax to inform the Agent accordingly, and to proceed to assess the Company for the current as well as the previous year under the provisions of the Mysore Incometax Regulation.

57 As the tax due for the previous years has been paid to the Government of India and a refund of such tax is due to us from that Government, it is proposed to address the Residency to arrange for the refund of tax due. The points alluded to above have been briefly mentioned in the draft letter.

58 I report the matter for the gracious information of His Highness and approval to the draft letter to the Residency.

K Chandy

MEMBER of COUNCIL.

Bangalore,
21st August 1925.

126

98/2

Record of Cases submitted for the Orders of His Highness the Maharaja

(23)

Subject.

Draft letter to the Residency re. levy of income-tax on the profits of the broad gauge line of the Madras and Southern Mahratta Railway Company, lying within the limits of Mysore territory.



171

Order.

69 ~~KRW~~
31/8/25

60 Resolved
67

2348
7-9.

525

61 2nd member for personal appearance.) B 7/9 62 B 8/9

(24)

eral and Revenue Secretariat.

IT File No. 13 of 1926-

Serial No

To.

The Secy to the Hon'ble the Resident
no. Pol 210 & 10.9.25
Explains how the M & S.M. Ry. Company is liable to Mysore Income Tax on the profits of the Broad Gauge line within the Mysore Territory & informs that the Commr of Income Tax in Mysore has been directed to proceed to assess the Company for the years 1924-25 & 1925-26 & requests that the Govt. of India may be moved to arrange for the refund to the Mysore Govt. of the portion of the tax due to Mysore for the years 1920-21 to 1923-24, as the same has been included in the tax levied by the Govt. of India on the entire profits of the Company.

The Commr of I.T. Bl 1652 & 10.9.25 forwards copy of the above.

2 From The Same Officer no. 7965 & 29.9.25
Enquires whether there are any special circumstances in justification of the delays in preferring the Mysore Govt's claim to the refund & requests that a copy of the correspce with the Agents of the M & S.M. Ry on the subject may be forwarded.

63 A draft reply is Subd. for consideration
KW 4/10/25

64 For approval

Rer secy) 65 Copy of the letter - Flag O. B 7/10
may be sent as called for & the Resy
As regards the delay, the question of
assessing the Co. was raised &

NOTE—Contn. Sheet

Revenue and Revenue Secretariat | File No. | of 192 .

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Very ago as 1920, and the papers re. Years lost sight of in the Secll.
This is the real explanation the Asst Comm has had to take for obtaining legal opinion.
The refund is not claimed under the 2nd proviso of Sec 26 as in the ordinary assessments but under the proviso requiring him to obtain sanction in writing

3261 10/10

PS. 9.10.25

bb Papers applied for.

12/10/25

(7) Dewan for personal perusal - PS. 12.10.25

68 Leg & APB

Issue 12/10

DEWAN'S OFFICE. Rec'd 12 OCT. 1925 Reg. No. 2885

DEWAN'S OFFICE. Rec'd 5 DEC. 1925 Reg. No. 4193.

3 To.
The Secy to the Hon'ble the Resident
Ref no. 2719 & 14.10.25

Explains the cause for the delay in preferring the claim.

4 From the Commr of Income Tax
No. C 2413 & 24.11.25

States that the Dy. Commr of Income Tax for Bangalore Tillysore has assessed the M & S. M. Ry Co. for the Broad-gauge Section for 1924-25 & for the Metre Gauge Section & broad-gauge Section for 1925-26.

Submd. for information

25/11

2nd proviso to Sec 26 Dewan's for perusal

Note—Contn. Sheet

26

Serial No	
5	From The Comm^r of Income Tax no. C 241 dt 9.6.26 Forwards copies of communica-tions from the Chief Auditor, M & S. M. Ry. & the Secy, Railway Board, stating that no further recoveries in respect of Mys^r Income Tax on salaries of Ry. employees of the Company will be effected.
6	From The Secy to the Hon'ble the Resident no. 5087 dt 11.6.26 States that as the Mysore Govt. have ceded full & exclusive jurisdiction over the lands in Mysore occupied by the M & S. M Ry, they are precluded from enforcing the Mysore I.T. Rules in such lands & requests that arrangements may be made to refund a sum of Rs 24693 wrongly adjusted in the past 4 years.

Note—Contn. Sheet

(27) 27

G.R.S. III—3]

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

Copy of Residency letter - No.5087, dated 11th June 1926, forwarding the reply of the Government of - India on the subject of the levy of - Income-tax on the profits of the broad-guage line of the Madras & Southern - Mahratt Railway within the Mysore territory, is submitted to the D E W A N.

V Lingaraucha
REGISTRAR.

Dewan
Mr Keigh
Chief Secy

Rev. Secy as well as Rev. L. Secy should put up notes. The 2 ofs. raise important issues.

13.6.26

74 The Govt has requested careful consideration & there are several points for report to Govt. The matter to be carefully examined. Comy Jurisdiction does not seem feasible but the all legal rights also the position of the matter to examine & submit report

Dewan
13/6/26

Rev Secy 76

Please Put up all connected Papers with a note. Papers relating to Assessment of

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

Jurisdiction on this basis should be obtained

* put up early

GRS
14.6.26

WD 01264—GPB—40,000—17-12-25

Serial No.

The delay was due to our having to get the previous papers - Even now we have not read all the correspondence with Mr. to Sandal.

13/7

(Revts)

77 Kind attention is invited to paras 11 & 19 in this file in which the whole question has been discussed.

78 It is not at all clear why the Govt of India have deemed it fit to raise any objection at this Stage. But for the fact that ~~Govt~~ Income Tax for the previous years had been credited to that Government & we wanted a refund perhaps no reference would have been made to them. No reference was made as a matter of fact with regard to the metre gauge & the company paid the tax without demur.

79 The present communication ~~has~~ is also inconsistent with the previous orders of the Govt of India, with regard to questions relating to 'Surcharge Tax' and Sandal trees grown on R[y] lands.

80 The point Raised by the Residency in para 2 of R.N.D. viz "that as the Mysore Govt have ceded full jurisdiction of every kind over the lands in their territory occupied by the Madras & Southern Mahratta R[y] & over all persons & things whatsoever within those lands, they are precluded from enforcing the Mysore Income tax Regulation in such lands" is untenable Since the Sovereignty of H.H. over those lands has never been ceded. It was in this view only that the Govt of India ~~have~~ refunded to us the "Surcharge ~~fees~~ on goods traffic" levied after much correspondence. vide R[y] Secrt file 137 putup

H.D. in the Ind. P.L.

Serial No. 81 The question of exactly what jurisdiction has been ceded to the 'Railway' area has also been fully discussed in the Ld Secy's note in the file referred to above. Page 21 of the Colln.

82 Kind attention is invited to the following paragraphs where the identical points are discussed & it seems therefore to be unnecessary to note further on these

Paras 8 & 9. Sovereignty rights & the powers of Mysore with regard to Taxation in Railway land

" " Meaning of Jurisdiction

" 16 & 17 The meaning of the term Plenary or full jurisdiction in the Resolution of 1877.

" 19. Trend of Previous Concep.

" 23. Decision of Privy Council that the grant of jurisdiction Carries with those rights which are necessary for that purpose

As pointed out in para 24 Clause 14 in the Treaty Specifically provides for what tax has not to be levied

E

25

83 As stated in para 79 above the Govt of India have ceded to us the rights with

NOTE—Contn. Sheet

Serial No.

H. J. G

regard to Sandal trees. The file on this subject was not available & so copies of the relevant letters obtained from the Conservator are put up. He has also been requested to send copies of other letters bearing on the subject & their receipt is awaited.

W

84 The collection re- Excise referred to by the Chief Secy is also put up. It is seen that in that file our point of view has been upheld ~~by the Collector~~

85 So there can be no doubt at all with regard to our right to tax the profits of the M.S.M. Co. ~~The purchasers~~

B&L

B

B/7

Rev Secy

26

Serial No

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86 The question of the rights ceded to the Government of India on the transfer of "full jurisdiction" over the Railway lines in Mysore has never been satisfactorily solved. There was a good deal of correspondence on this subject in 1908 in connection with the claim of the Government of monopoly rights over sandal trees growing on Railway lines. In his ~~letter~~ reply dated 26th October 1909, the Resident asserted that the term "full jurisdiction" included the exercise of fiscal rights., although ~~the~~ permission to remove sandal was given on the ground that the Government of India had no desire to raise ~~the~~ revenue for themselves in the lands ceded.

The right of the Mysore Excise Department to issue license for the sale of liquors in the Railway refreshment rooms which had been exercised for a long time past was allowed to continue by the Resident in his letter dated 5th December 1910, although it was stipulated that, should circumstances necessitate, the Residency would take up the matter again at the point at which these matters were left by Mr. Fraser. This refers to the contention in the Residency letter No.3914 dated 27th July 1908 that none of the Mysore laws could be enforced in the Railway lands over which jurisdiction was ceded to the Government of India.

88 The Government of India have ~~allowed~~ refunded to us ~~the~~ ~~refund~~ ~~of~~ ~~the proceeds of~~ the surcharge collected during the period 1917 the freight tax ~~realised~~ only on the Railways owned by the State. The

NOTE—Contn. Sheet

Serial No

Flag E (linked file)

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question of the refund of the proceeds of the tax realised on the Bangalore-Bisinatham section of the M.S.M. Railway is still under correspondence. In 1918 the Government moved the Government of India to retransfer the jurisdiction now exercised by them on the Railway lands in the State. In their reply dated 15th May 1920 ~~to this request~~, the Government of India postponed their final decision on our proposals until they were in possession of the views of the Ruling Princes in regard to future railway policy in the Native States, which they said would soon be considered in the permanent Committee of Princes. It seems therefore desirable that the whole question should be considered fully now, as the Government of India in their recent letter PVD have definitely raised the issue that our Income-tax law has no operation in the lands over which full jurisdiction has been transferred to them.

89 In order to avoid elaborate noting on the subject, I have submitted for consideration, a draft letter to the Residency. The points raised in the draft letter are as follows:-

H

(1) That the Notification regarding the transfer of jurisdiction over the Railway lands continues to vest the sovereignty in the lands in His Highness the Maharaja and acknowledges his powers of taxation on goods carried over Railways on such lands.

C.T

(2) That the jurisdiction transferred was

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simply civil, criminal and police jurisdiction necessary for the administration of justice along the Railway line.

(3) That the whole tenor of the correspondence between the Mysore Government and the Residency on this subject shows that the transfer of jurisdiction was made simply for administrative convenience, with a view to enable the Imperial Government to exercise control over the Railway and that there was nothing derogatory to the prestige of the State in such transfer.

(4) That in the analogous instance of the transfer of jurisdiction over Railway lands in Hyderabad State, the Privy Council have fully supported the interpretation given above.

(5) That the Residency have admitted that it was not the policy of the Government of India to raise revenue on Railway lands over which jurisdiction has been ceded and that the monopoly rights of the State in sandal growing on such lands have been recognised.

(6) That the proceeds of the sur-charge levied under the Freight Tax Act 1917 on the traffic over the Railway lands owned by the State have been refunded and the claims of the Government for the refund of the proceeds realised on the lines owned by the Southern Mahratta Railway have been urged and are under the consideration of the Railway Board.

(7) That the rights of the Mysore Government

to receive the surplus revenues, including the proceeds of the income-tax, of the Civil & Military Station over which exclusive powers of management and all jurisdiction have been assigned to the Government of India has been acknowledged and it is obvious that the State is entitled to the income-tax on the earnings of the Railways working on such lands over which only jurisdiction has been transferred to the Imperial Government.

(8) That the Railway lands under advertance do not form part of ~~xxxx~~ British India and as it is believed that the Indian Income-tax Act has not been applied to these lands, unlike the Civil and Military Station, Bangalore, the earnings of the Railways on the traffic carried over these lands are not liable to the Indian income-tax; and if it should be held that the Mysore Government are precluded from levying income-tax on these earnings owing to the cession of jurisdiction to the Government of India, they would not be liable to the income-tax of either Government.

OFFICE OF THE SECOND MEMBER OF COUNCIL
28 JULY 1926
No. 625

90 Reference is invited to the Dewan's minute dated 13.6.26 Para 15 above.

CRI. CRM. 27.7.26

2nd member)

91 The questions about which action has to be taken are the following:-

(1) The direction of the Government of India to the Agent, M.& S.M.Railway "to cease to pay income-tax

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income-tax to the Government of Mysore in respect of the ~~prefix~~ profits of the Mysore State lines and to cease to recover income-tax from t employees of the M.& S.M.Ry.Coy. on behalf of t Government of Mysore unless the employees are paid in Mysore territory": vide enclosure to Residency letter dated 11th June 1926.

Z

(2) The view of the Government of India that as the Mysore Government ceded full and exclusive jurisdiction of every kind over the lands in their territory occupied by the M.& S.M.Railway and over all persons and things whatsoever within those lands, they are precluded from enforcing the Mysore Income-tax Regulation in suc lands". According to this view the income and super taxes claimed in our letter dated 10th September 1925 in respect of the Bangalore-Bis tum Section of the Madras Railway will not be paid to us ~~by the Company~~ for the period fr 1920-21 to 1923-24 or for subsequent years.

P.U.D.

Q.

(3) Claim of the Government of India to the refund by us of Rs 24,693 which is the amount o rebate allowed by that Govt to the Company: vide paras 3 and 4 of the Residency letter dated 11th June 1926.

P U D.

(4) Whether the notice to furnish a return of total income for 1926-27 should or should not be issued to the Company pending modification of th view taken by the Government of India in regard to (1) and (2) supra.

31

92 Question (4).- We cannot accept the position taken

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taken up by the Government of India in regard to questions (1), (2) and (3). The Income-tax Commissioner may, therefore, be authorised to issue a notice to the Company calling upon it for return of total income from all lines worked by it within the State, including the Bangalore-Bisantum Section. The Company may also be called upon, as hitherto, to collect the tax from its employees residing on railway lands. I think it is necessary to enforce our law in the usual course. The non-issue of notices and of assessment orders has given rise to controversies in the past; vide para 1 of Residency letter dated 29th September 1925.

93 Questions (1), (2) and (3).- I do not think it is necessary to advance all the arguments urged in the draft proposed by the Revenue Secretary. It is not necessary to refer at great length to previous discussions on allied subjects. The attitude of the Government of India in regard to matters of this kind was not quite reasonable in the past and it has been slowly undergoing considerable modification in the proper direction. In view of this changing attitude, the view of that Government communicated in the Residency letter dated 11th June 1926 is somewhat surprising. I think it will be sufficient to base our reply to this view on general grounds which may be the following:-

(1) The cession of jurisdiction was only for railw

NOTE—Contn. Sheet

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railway purposes. No other view of the cession is reasonable.

(2) All rights over the ceded lands except those relating to the use of the lands for purely railway purposes vest in the Mysore Government.

(3) The cession was not intended for the pecuniary benefit of the Government of India or for depriving Mysore of its revenues, and accordingly, the appropriation by the Government of India of the income and super taxes in respect of incomes and profits made on railway lines within the State is not justifiable.

(4) It is the present policy of the Governme of India to reduce even their existing powers o lines in Indian States "to the minimum necessa for railway purposes": vide Residency letter dated 28th July 1926. We have asked for compl retro-cession of jurisdiction over railway lin in Mysore: vide our letter dated 16th August 1926. The present claim to levy taxes in respe of areas over which jurisdiction for railway purposes is ceded, is opposed to such policy

(5) Ceded areas are included in the term "Dominions of Princes and Chiefs in India in alliance with His Majesty": vide Governmen Resolution No. 791-F. dated 26th March 1918. The British Indian Law relating to income super taxes cannot be applied to the M.& S. Railway Company: vide Section 1 (2) of Act of 1922.

(6) Last year, the Government of India a law making "the Government of any part o

Quoted on page 75 of the Government of India Income-tax Manual.

NOTE—Contn. Sheet

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Majesty's Dominions exclusive of British India liable to income and super taxes in respect of any trade or business carried on by or on behalf of such Governments in British India. The Central Board of Revenue has interpreted this law as applying to Governments of Indian States. If the Government of an Indian State carrying on a business or trade in British India is subject to tax, it is difficult to understand why a company carrying on the business of railway transport in an Indian State should not be made liable to the taxation of that State. Strictly applying the principle of reciprocity, even the profits which the Government of India makes over the Bangalore Bisantum Section of the Madras Railway should be held liable to the Mysore Income and Super taxes When such is the position created by this new law it is not fair on the part of the Government of India to contend that the M. & S.M.Ry. Company should be exempted from Mysore tax in respect of the profit which it makes in working railway lines within the State.

94 In the circumstances stated above, we may inform the Government of India that we cannot agree in the view held by them and that they may kindly reconsider the matter and allow the M.& S.M.RY.Company and its employees to be taxed under the Mysore Income-tax law. We may also add that proceedings for purposes of assessing the Company are being taken in the usual course

G.H.

hns

WD 01264—GPB—40,000 17-12-25

neral and Revenue Secretariat | File No. 39 of 192

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and that this action is being taken to prevent requests for relief on the ground that the claim to tax was not preferred in time.

DEWAN'S OFFICE.
Received on
19. AUG. 1926
Reg. No. 1288

M N.K (18-8-26)

(Dewan) 95 I agree with 2nd M. General. GRO 18-8-26

~~This~~ The draft ~~letter~~ Letter Covers too many points; & the manner of ~~assessment~~ assessment may ~~perhaps~~ be imposed.

Before putting up a revised draft, the views of the L.L. Secy may be recorded & ~~early soon~~. ✕ Whether we would be, as Constitutionally, in order to direct Govt. of India to take steps — (& ~~to~~ coercive steps if Company fails to send Returns) may also be noted. Some temperate shd perhaps be shown in our reply to Govt of India's Summary letter to Railway Bd.

19/8/26 HB.

he has already noted his favour of our Contention, but in view of Govt of India's action, position shd be explained, your Grounds strengthened, if possible.

GRO 1927

~~Secretary~~ ~~Secretary~~ 96 Submitted to Journal.

~~Secretary~~ 2nd Member)

GRO 19.8.26

97 19.8.26

OFFICE OF THE SECOND MEMBER OF COUNCIL
19 AUG. 1926
No. 1418

GRO 20.8.26

L. I stay with Comptr.

98 I have given my full consideration to the very important question of Sovereignty raised by the Govt of India & have enclosed herein my considered opinion.

99 I have clearly shown after full examination of the correspondence & the admissions made by the Govt of India, that their contention is quite untenable.

100 As the question is of far reaching consequence

vide attached sheet

WD 01264—GPB—40,000 —17-12-25

I-T File No. (40) 13 40 of 192 5.

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I submit that the Govt may ~~Labour~~ send a detailed memorandum ~~drawn up~~ ~~giving~~ embodying salient features of the case for the consideration of Govt of India in the same manner as Late Sir K Seshadri Iyer did in pressing our right to retain jurisdiction.

101 Regarding the steps to be taken to recover the ~~tax~~ income tax from the Railway Company, I am of opinion that the Govt would be in order to enforce the provisions of Regulation against the Co for the recovery of dues for the year 1925-26 —

102 If we neglect to take steps, we may lose our remedy by lapse of time.

If the Co wish us to refer the question to the Ct, we may consider it favourably. I have no doubt in my mind that the decision of the Ct will no doubt be in our favour. The correspondence between the two Govts will not affect the rights of the parties in a Court of law.

Dewan

2nd Member.

C936 18/9/26.

DEWAN'S OFFICE.
Received on
8 - SEP. 1926
Reg. No 4830.

NOTE—Contra Sheet 15/9/26.

Confidential.

41

Chandra-Vilasa," Bangalore City,
20th September 1926.

Dear Mr. Mirza Ismail,

It has taken me some time to go through and study the papers sent for opinion with your letter of the 13th instant; and I have also had to consult some other references.

2. The problem of Railway Jurisdiction is a rather difficult and vexed one, and has given rise to much controversy in the past without leading to any definite solution. Much may be and has been said on both sides; but unless we can urge grounds likely to find acceptance with the Government of India, the mere reiteration of plausible assumptions and arguments of the kind put forth in several of the notes in the file is not calculated to facilitate a solution now.

3. The question that has actually arisen for disposal is whether the Mysore Government is entitled to levy income-tax on the profits earned by the Madras and Southern Mahratta Railway Company on railway lines within the Mysore State over which "plenary jurisdiction" has been conveyed to the Governor General in Council. On this question the position taken by the Government of India is that "as the Mysore Government have ceded full and exclusive jurisdiction of every kind over the lands in their territory occupied by the M.& S.M. Railway and over all persons and things whatsoever within those lands, they are precluded from enforcing the Mysore Income-tax Regulation in such lands."

4. If this position is to be successfully controverted, we must either make out that the jurisdiction ceded was not "full and exclusive", or show that, ir

spite of the grant of such jurisdiction, the Mysore Government has the right to enact a fiscal law like the Income-tax Regulation applicable to railway lands and to enforce it within the limits of such lands.

5. Upon the question as to the exact nature and extent of the jurisdiction transferred, practically everything that can be usefully urged was already set forth in the two marginally noted communications* sent by us to the Residency when I was Secretary to Government. We tried to show, by reference to the correspondence that passed between the Durbar and the British Government on the subject of the cession of railway jurisdiction, that the "full jurisdiction" short of sovereignty rights transferred to the Governor General in Council meant no more than the ~~same~~ jurisdiction necessary for the proper management of the Railways concerned and the efficient administration of civil and criminal justice over them. We also relied on the Privy Council ruling in a somewhat similar case from Hyderabad (reported in 25 Cal.30 to ~~33~~) as laying down that, in the circumstances of that case, the transfer of jurisdiction did not involve any cession of territory but merely conceded whatever was necessary for the sake of legal and administrative convenience. Our contention was that the transfer of "full jurisdiction" did not involve a cession of sovereignty, and as such could ~~did~~ not affect rights not inconsistent with the exercise of such jurisdiction nor necessary therefor.

* Letters No.Pol.1022 dated 16th June 1908 and No.300 Pol. dated 30th Oct.1908.

6. The Resident of the time, Mr.S.M.Fraser, was, on the other hand, of the opinion that "'full jurisdiction' includes full and exclusive power and jurisdiction of every kind over the lands occupied for railway purposes and over all persons and things whatsoever within the said lands," -- which, by the way, is almost the same formula word by word that is used by the Government of

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India on the present occasion. According to him, none of the Mysore laws are in force in the railway lands in question, to which the only laws now applicable are those valid for the time being in the X Civil and Military Station of Bangalore. Our further arguments failed to convince Mr. Fraser; and eventually, at his suggestion, the question of jurisdiction was not pursued, and the claim to sandal trees was allowed on a different ground.

7. The matter therefore is reduced to this. Whatever may be the case with regard to the transfer of railway jurisdiction in the Hyderabad State, -- and there certainly was some difference in the wording,-- the transfer that was made, in the case both of the Bangalore Branch of the Madras Railway, prior to the Rendition, and of the Mysore State Railway from Bangalore to Harihar including the extension to Hindupur, subsequent to the Rendition, was of the "full jurisdiction on all the lands occupied" by the Railways, an expression which, it may be taken, is the same as the "full jurisdiction, short of sovereignty rights," that was ceded under the Notification of 1877 in respect of the Madras Railway. Article 15 of the Instrument of Transfer, reproduced in Art.14 of the Mysore Treaty, means exactly the same thing.

8. Now, can it be contended that this is any way different in its scope and effect from the "renunciation of all jurisdiction" which is provided for in Art. 9 of the Instrument (Art.8 of the Treaty) in respect of the lands granted for the maintenance or establishment of British Cantonments, and specifically of the Civil and Military Station of Bangalore which is held under its authority? Viewing the point as one of legal interpretation, I do not think that it is possible to draw any real or substantial difference. Unless there are any other material documents of which account has not been taken, I must say that both over the Railway lines and over the Station the Governor General

in Council has an identical extent of authority describable by the phrase "full jurisdiction short of sovereignty rights."

9. This, however, does not help our position very much. The sovereignty rights reserved to the Maharaja are ~~ø~~ residuary or reversionary rights; and it is impossible to accept as correct the Secretariat suggestion that His Highness ~~has~~ possesses in virtue of them a present right of legislation over the assigned area. No such right has ~~ø~~ ever been claimed or exercised ever since the jurisdiction over the Civil and Military Station was assumed by the British Government. It is that Government that has been uniformly passing the laws required for the Station; and as regards the Railway lands, the Government of India Notification of 6th February 1896, issued with our knowledge and acquiescence, has explicitly declared that "all laws for the time being in force in the Civil and Military Station of Bangalore shall be deemed to be in force in the aforesaid lands." I am afraid it is too late in the day to contend that His Highness the Maharaja can enact laws operative in the Railway area any more than he can for the Station.

10. If, then, there is no present power of legislation at all, how is it possible to maintain that the fiscal laws of the Mysore State are nevertheless ~~are~~ operative ? The case of the surplus revenues of the C & M Station, on which the Secretariat bases an argument, has nothing whatever to do with the specific point before us now. For the right of the Mysore Government to such surplus is not derived from any admitted claim to impose and collect taxes directly, but is based on political and equitable grounds turning upon the purposes of the assignment. If similar grounds can be plausibly urged in regard to the Railway lands also ~~(upon which point I say nothing at present)~~, it may be possible to support the claim ~~to~~ as one ~~to~~ in respect of ~~surplus~~ territorial rights revenue generally, but not on the basis of a right of direct taxation.

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11. I may observe in passing that there is obviously no special significance in the fact, suggested by the Secretariat, that the surplus revenues of the Station include, presumably, some portion of the receipts from income-tax also. The right to the surplus is conceded because it represents what is left over after meeting all necessary expenditure, not because it is made up of items to which each of the Mysore Government has a ~~distinct~~ specific claim.

12. I have already alluded to the correspondence about the claim of the Mysore Government to sandal trees within railway limits. This was eventually allowed quite independently of the quesion of jurisdiction, and upon the ground that "it is not the policy of the Government of India to exercise the fiscal rights which may be conveyed to them by a cession of full jurisdiction further than to protect British revenue, and they have no desire to raise revenue for themselves in the lands to which the cession relates." This, I may note, was the personal view of the then Resident; and it is just possible that, if we make too strenuously use of it to try and persuade the Government of India to forego income tax revenue in the Railway area, that Government may repudiate any such principle of self-denial! Our appeal to that principle must be made in a diplomatic way.

13. I am rather surprised at the idea, suggested in the Secretariat file, that the clause in the Instrument against the levy of duty or tax of any kind on through traffic carried by the railways, which may not break bulk in Mysore territory, is a recognition of the fiscal rights of the Mysore Government within the Railway area. Of course it is nothing of the kind. Mysore can not tax goods while they are on the railway line, but only if they break bulk and while they are being conveyed to or from the railway: (Cp. condition III of para 2 of the Govt of India Notifn of 22nd November 1877); that is to say, when the goods are actually on territory within State jurisdiction; — which is a different thing altogether, and quite within our rights.

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14. Then there remains the claim pressed by the Mysore Government for a refund of the surcharge on freight, the partial recognition of which by the Government of India is treated as lending support to the present claim to income-tax. So far as I understand the basis of the former claim, the matter is shortly this: When the Government of India directed a levy of surcharge under the Freight Act, as a special measure pending a general increase in good rates, the Mysore Government represented that the same causes (such as enhanced working expenses) which necessitated an increase of revenue from railways in British India operated also in the Mysore State, and that it was entitled in equity to a part, if not the whole, of the surcharge earned on railways owned by the State whether worked by the State directly or by the S.M.R. Company. The Government of India admitted the justice of the claim in so far as related to the surcharge levied on traffic over railways owned and worked by the State; but hoped that the Mysore Government would not press ~~their~~ its claim for re-imbursement of the surcharge levied on traffic on the Bangalore-Bisanatham Section of the Madras Railway, which was owned and worked by the Company and in which the Mysore Government was not financially interested. Thereupon the Mysore Government contended (apparently shifting its ground somewhat) that the levy of surcharge was not, as stated by the Government of India, a temporary substitute for enhanced railway rates, but really a tax intended to add to the resources of the Empire in order to finance India's war contribution, and that though the Act authorised its levy only in British India, its levy was enforced also within the limits of the Mysore State. As it was thus really a tax collected in Mysore, the State, it was contended, was entitled to a refund of surtax on all railways irrespective of financial interest. This was in August 1925; and the matter is stated to be still under the consideration of the Government of India.

15. It is exceedingly doubtful whether the Government of India will now go back upon the view previously expressed as to the surcharge being simply a temporary enhancement of railway rates and not a tax or a duty on goods; and even more so whether, giving up their position of vantage, they will go further and conceded the right of the State to the proceeds of the tax (treating it as such) collected within railway limits. The distinctly hostile attitude taken up by them on the income-tax question and their demand that we should even refund the income-tax already paid to us for years on the Company's share of profits over the Mysore State lines worked by it, affords little room for encouragement. On the whole I cannot say that we can found much of an argument for our present claim in respect of income-tax upon the circumstance that we were so fortunate as to obtain a share of the surcharge on the freight on ~~the~~ State-owned railways.

16 The opinions furnished by the Local and Legislative Secretary consist largely of quotations (not always ~~duly~~ ridiculed and ~~acknowledged~~). He has cited largely from two reported cases, one of which is the Privy Council case in 25 Cal.20 already referred to, and the other the observations (~~many~~ part of them obiter) of Mr.Justice Benson in the Full Bench case in 26 Mad.607. (I may say, in passing, that I was myself deputed by the Mysore Government in the last mentioned case to instruct the Public Prosecutor Mr.Sankaran Nair, and supplied him with a written memo of the arguments to be used). Neither of the two cases has really much bearing on the question before us. A decision is only an authority for what is actually decided. In the Privy Council case, the decision was merely that a person accused of an offence committed in British India could not be lawfully arrested, under the warrant of a British Indian Magistrate, on lands of the Hyderabad State Railway over which the Nizam had ceded "civil and criminal jurisdiction;" it did not touch upon the Nizams

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own right to legislate or levy taxes within the transferred area. In the Madras Full Bench case the question was whether a European British subject was liable to prosecution for a breach of the Mines Regulation passed by the Mysore Government, and if so, whether a Justice of the Peace appointed by the British Government had power to try him therefor. The Judges decided both branches of the question, quite rightly, in the affirmative. Mr. Justice Benson, in dealing with Art.17 of the Instrument which vests plenary criminal jurisdiction in the Governor General in Council, observed that this did not necessarily transfer also the right to make laws binding on European British subjects. But it does not follow from this that the same construction would hold good where the transfer of jurisdiction is plenary in respect not of a person, but of a place. Indeed, the learned Judge has himself pointed out the distinction when dealing with the article (No.9) relating to the renunciation of jurisdiction over lands required for Cantonments; reserving Right there the word "jurisdiction" has been used in a wider sense as including the power to legislate; and he goes on to add, with special reference to the Civil and Military Station: "Since that time the Maharajah has retained the bare sovereignty of those lands, and what may, perhaps, be called the reversionary interest in the jurisdiction assigned, but all the actual powers of government, including taxation and legislation, have in fact been exercised by the British Government."

[illegible]

17 I think I have examined all, or almost all, the grounds put forward in the notes and draft contained in the file. I do not think they are strong enough to warrant our laying claim to income-tax on the basis of our fiscal laws, and in particular of the Mysore Income-tax Regulation, being operative within the limits of the Railway area over which full jurisdiction has

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been ceded to the British Government.

/8 - In my opinion it would be better not to stress too much a questionable claim of direct legislation or taxation, but to appeal to the Government of India to take an equitable and statesmanlike view (--somewhat in the same manner as they have done in the case of the surplus revenues of the Station--) of the whole situation. The area in question is Mysore territory, over which jurisdiction has been given over for a specific purpose; the Government of India have in the past disclaimed any intention of exercising fiscal jurisdiction over railway land so as to raise a revenue for themselves in such land; and the Mysore Government feel justified in hoping that that policy will not be altered now to the prejudice of their just and proper rights so as to convert a transfer of jurisdiction short of sovereignty rights into what would, for all intents and purposes be a surrender of sovereignty that was never intended. The question of retrocession of railway jurisdiction has been separately raised by the Mysore Government in connection with the general question of Railway Lands in N Indian States: Vide the Chief Secretary's Letter No.Pol.175 dated 16th August 1926. Pending the final disposal of that question, His Highness' Government (we may say) will feel deeply grateful if the Government of India will allow the existing practice, in regard to the levy of income-tax on the Company's share of the profits of the Mysore State lines, to continue without interruption, and at the same time take a favourable ~~and equitable~~ view of the claim to income-tax revenue over all lines generally within the State. The analogy of the surplus revenues of the C & M Station may be pressed, not for supporting a right to levy taxation directly, but to show that the claim of the Mysore Government to derive revenue even over areas over which they have ceded full jurisdiction is a just and equitable one.

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19. I do not know if the ~~view taken~~ statement in the notes in the file, that the Indian Income-tax Act has not been applied to railway lands in Mysore, is correct. In any case, the Government of India may be trusted to arm themselves with full legal authority for any exercise of fiscal authority by them. It will suffice, so ~~ø~~ far as the Mysore Government is concerned, if the Government of India will concede our claim to ~~ø~~ this among other sources of revenue derivable from the area in question, and help us to realise that claim either by permitting us to recover it direct or, if preferred, by collecting it themselves and making over the net proceeds to the Mysore Government. We may put our representation in some such general way, instead of touching needlessly upon the delicate and debatable question ~~ø~~ as to the legality of the procedure for direct recovery.

20. I have merely indicated some of the broad lines on which our claim to income-tax revenue may be put so as to find some what ready acceptance. If my opinion is accepted, it will not be difficult for the Secretariat to prepare a suitable draft on the lines finally decided on.

21. I return herewith the papers sent.

Yours sincerely

MS Chandrasekharaiya.

Opinion. 51

I have been asked to examine the position taken up by the Government of India in respect of the operation of the Mysore Income-tax Regulation over railway lands. The question raised by the Government of India is that the Government of Mysore are precluded from enforcing the Mysore Income-tax Regulation in railway lands over which full and exclusive jurisdiction of every kind over all persons and things whatsoever have been ceded to the Government of India. In other words the Government of India claim full sovereign rights over the railway lands occupied by railway in Mysore and treat it as a British territory for all purposes of exercising jurisdiction and legislation and taxation. From the nature of the issue raised it is clear that the question is of wider and far-reaching consequence in that the British Government claimed as their own the lands occupied by the railways in Mysore as well as those lands over which the railway will be extended connecting it with railways in British India. As the Government of India have raised this question in an acute form, it is very essential that our Government should carefully examine and if found that our position is strong, we have to emphatically deny their right and get a final decision upon this question. I will therefore deal, to some extent, exhau[illegible]

upon all the aspects of the case with a view to ascertain our position.

2. The solution of this question entirely depends on the amount of jurisdiction intended to be conveyed to the Government of India over these lands. As there is no express treaty and no words which in themselves precisely define the amount of jurisdiction intended to be conveyed by the Mysore Government, it becomes necessary to revert to the correspondence which passed between those representing the two Governments to see in the first place what was asked for and what was ultimately conceded.

Solution of the question.

3. The printed papers relating to Railway jurisdiction in Mysore contain,

first, correspondence leading to the cession of jurisdiction over lands on which the Bangalore-Madras Railway has been built; and

Correspondence leading up to the cession of jurisdiction.

secondly, the cession of jurisdiction over the land occupied by the Mysore State Railway.

From the Notification issued in both these cases it is clear that the amount of jurisdiction ceded to British Government is the same in both the cases. Hence both may be considered together.

4. Lands were acquired at the cost of Government and made over in 1859 by the Mysore Government to the Madras Railway Company for bona-fide purposes of constructing a Railway. These lands were made over to the British Government on

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conditions contained in Government resolution dated 22nd November 1877. The conditions are mentioned at page 5 of the printed papers. The conditions are :-

first, the lands are given free for ~~bona-fide~~ purposes of railway,

secondly, full jurisdiction in such lands, short of sovereignty rights, were ceded to British Goverment, and

Soveriegn rights are excepted from the grant

thirdly, the right to levy duty on goods breaking bulk has been recognised.

5. As regards the question of ceding jurisdiction over lands on which Mysore Railways were built, the correspondence on this question began first with a letter dated 2nd November 1888 from the Assistant Resident to the Dewan of Mysore Flag I. In this the Government of India indicated their policy and raised the qudstion of jurisdiction for the first time. They observed as follows :-

" In reply, ~~to~~ Sir ~~Henry~~ Harry Prendergast has been informed that the Government of India have the fullest confidence in the ability of the Mysore Courts, but for the sake of administrative convenience, they desire that, as in other great Native States such as Hyderabad and Kashmir so in Mysore the jurisdiction upon lines of railway shall vest with the Imperial Government". This was after the transfer of the management of the Mysore State Railway to the Southern Mahratta Railway Company on 1st July 1886. After this reply, a long and protracted correspondence began between the ~~represent~~

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representatives of the two Governments.

This letter was in reply to a letter from the Dewan of Mysore to the Resident on 2nd July 1886. In that letter the Mysore Government asked that they may be allowed to continue to exercise Civil, Criminal and Police jurisdiction and that not required to transfer such jurisdiction to the British Government. From the letter and the reply it is abundantly clear that from the commencement of the discussion on the question of jurisdiction the subject matter of correspondence related only to the exercise of Civil, Criminal and Police jurisdiction over the railway lands and nothing more.

Correspondence relates only to the cession of jurisdiction (Civil and Criminal)

6. In para 12 of the memorandum the case of the Mysore Government for not giving up the jurisdiction till then exercised by them has been carefully and forcibly made out. It is important to note in this connection that His Highness the Maharaja while showing his loyalty even to make the territorial assignment required, to give effect to the wishes of the Government of India submitted the question of cession of jurisdiction for the indulgent consideration and final orders of His Excellency the Viceroy. It has been shown clearly that the case of the Mysore Government - differs materially from the circumstances connected with railways in other States. The main features of the Mysore Railways are :-

(1) First, that the Mysore State Railways continues to be State property hypothe-

cated

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hypothecated to the Southern Mahratta Railway Company for 50 years and liable to be redeemed at the end of that term. That nearly one half of the railway was constructed by the State from current revenues and a small loan and this is not the case with railways in Native States,

Secondly, the Civil and Criminal law is the same as that in force in British India and this is not the case in Hyderabad ; and

thirdly, the existing law in Mysore cannot be altered without the previous consent of the Government of India. When Mysore redeems the Railway, the jurisdiction will naturally vest in it and there is no advantage apparently to be gained by a temporary change of jurisdiction. The fact that the management of the railway in Mysore alone will always be under British control will be sufficient for all practical imperial purposes, and the exercise of jurisdiction over the line by the Durbar will cause no inconvenience whatever to the British Government. Their Jurisdiction up to date has caused no such inconvenience and all that they ask is that the existing condition of things may be allowed to continue until it is found to produce any inconvenience.

7. The D.O.letter dated 18th December 1888 to the Resident contains important observations. ~~First~~

First, the Mysore State Railway was from the very beginning intended to belong to Mysore State,

secondly, though the Maharaja binds himself to make over free of cost any lands required for British railway the transfer of plenary

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plenary jurisdiction in such land is a point for future examination upon grounds of administrative convenience. (Vide letter from the Government of India to the Secretary of State No.26 dated 3rd March 1880,)

thirdly, the letter from the Government of India to the late Chief Commissioner dated 17th December 1880 shows that " the jurisdiction and management of the Mysore State Railway may best be left in the hands of the Mysore Government." In reply to that letter the Government of India have expressly stated in their letter of 24th January 1881 that the Government of India concur in the views relating to jurisdiction and management of the Mysore State Railways,

fourthly, the Government of India have clearly set forth their policy in Foreign ~~Secretary~~ Secretary's letter to the Mysore Resident dated 20th September 1881. The Government of India observed that the Mysore Railway cannot be "looked upon as one of merely local interest, but must be considered as forming part of the net work of imperial railways now so rapidly expanding over the continent of British India. It is therefore desirable - that the same amount of supervision that the Government of India deems at present necessary for the general safety of the travelling public should be extended to the Mysore Railway." The rules which the Government of India then laid down were accordingly confined to the object of securing the safety of passengers, The Government did not even refer to the

Policy of British Government.

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question of jurisdiction though there was a prospect of connection with Southern Mahratta Railway Company at Harihar which was then forseen. In the letter of the Assistant Resident dated ~~22nd~~ 12 October 1881 communicating the above orders of Government it was stated that "it ~~has~~ is to be understood that in the event of the Mysore line becoming connected with a general system of railways throughout India, the existing arrangements will be liable to alteration and may probably be considered modified in the direction of closer control by the Imperial Government." Thus with the expansion of our Railway, we were led to expect a closer control by the Imperial Government, but never any surrender of jurisdiction over Railway lands.

8. In reply to the letter of 2nd November 1888, the Dewan of Mysore on 6th December 1888 set forth the views of His Highness' Government explaining that even for administrative convenience the Government of Mysore would be prepared to adopt such measures as will effectively safeguard the interests of European British subjects and that they were not prepared to hand over the jurisdiction to British Government.

9. In reply to this, Sir Henry Prendergast has definitely stated as follows in his letter dated 18th December 1888. "

Policy.

It is the policy of Government of India now to require cession of jurisdiction upon lines of railway, in Native States, which are not purely local. In pursuance of this policy the Governor General in Council has recently obtained jurisdiction in the States of Hyderabad and Kashmir by the free

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will of the rulers and now asks, as a favour, for jurisdiction in Mysore, ~~but~~ not because His Excellency is sceptical about the ability of the Mysore Courts, but simply for the sake of administrative convenience . I may mention that the Nizam's Railway like the Mysore line was at first constructed solely from the resources of the Native State.....,
I trust that you will agree with me in the opinion that no loss of prestige is involved in a voluntary cession in the interests of Imperial Administration, a cession already granted by the other great Native - States and one that might be gracefully offered by the Government of His Highness the Maharaja of Mysore and would be gratefully accepted by the Government of India."

Hyderabad case.

10. This letter follows immediately after the cession of jurisdiction in the lands used for the construction of railway in Hyderabad. On the 28th of March 1887 we find the British Resident in Hyderabad writing to the - minister of that State as follows :-

" The thing desired by the Government of India was sufficient power for the railways to enable the magistrate and police officers recently appointed with the Nizam's consent to perform their duties " and he suggested a transfer of criminal and civil jurisdiction over the railway lines. The British Resident clearly stated that " the grant of lands for carrying on a small piece of administration in a more legal and efficient mode than has hitherto been found possible

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can possibly be viewed as a commencement of annexation of large tracts in His Highness' dominions by the English Government." He concluded thus:--

"I hope that this letter will serve to 'clear the air' a little about what really is only a matter of administrative convenience and is absolutely free of any such far-reaching consequences or designs as the draft letter would seem to prognosticate from it."

11. In reply to that letter the Nizam's minister stated that His Highness' Government was willing to accede to the wishes of the Government of India regarding the Civil and Criminal jurisdiction along the line of railway as is the case with other lines running through Independent States." Thus from the correspondence in Hyderabad it is more than manifest that the only jurisdiction given is a criminal and civil jurisdiction along the line of railway as in the case of other lines running through independent States and nothing more. It is perfectly plain that no cession of territory was granted in Hyderabad and that only a jurisdiction to exercise Civil and Criminal functions over the land was ceded. Reference to this is made in the letter of 18th December by the Resident to the Dewan of Mysore. Therefore it is clear that what was asked by the Resident on

18th December 1888 was the same jurisdiction as was ceded to the Government of India by the Nizam. This I have quoted to show that the Privy Council construed "full jurisdiction" granted under similar circumstances to mean only the exercise of civil and criminal jurisdiction.

12. In D.O.letter dated 9th January 1889 from the Assistant Resident to the Dewan it has been observed as follows:--

"The Resident would point out that whatever construction may be put upon the terms of words, the salient feature in the policy of the Government of India towards the Mysore State Railways has been its desire to make 'no marked departure from the broad general principles under which all the railways in India are now controlled." It has never been the intention of the Government to make any exception in the case of the Mysore Railway and it may safely be inferred that the Instrument of Transfer was not intended to contain any provisions contradictory to the professed policy. One of the most familiar broad principles which the Government follows is to reserve to itself the power to assume jurisdiction on the railways in Native States when their connection with other lines or their union with the net work of imperial railways in India renders this course desirable on grounds of administrative convenience."

General Principles

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13. To this the Dewan in his letter dated 2nd February 1889 to the Resident in Mysore replies as follows:--

"His Highness has, however, always been under the impression that the uniformity thus insisted upon had reference to management and control so as to ensure the safety of passengers and not to jurisdiction. His Highness asked for special indulgent consideration at the hands of the British Government on the ground that there was no uniformity in procedure as regards jurisdiction over railway lines in Native States."

In a D.O. from the Dewan on 20th May 1889 to the Resident in Mysore His Highness expressed himself ~~thus~~ "~~that~~ "he is most anxious to do everything in his power to promote administrative convenience" and suggested a plan to employ European British subjects (to try offenders) and that he would give effect to a scheme so as to make the Durbar's exercise of jurisdiction on railway lands as efficient and satisfactory as if the same were under the hands of the British officers. Even in the case of Police administration His Highness expressed a wish that a special police officer would be appointed as a police magistrate and he would place him in subordination to two European British subjects and His Highness passed orders regarding the Police and magisterial work on the State Railway line entrusting the work to European officers.

Scheme suggested.

Inference.

14. The inference to be drawn from this correspondence is irresistible, namely, that the jurisdiction asked for was only in

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respect of exercise of Civil, Criminal and Police jurisdiction over the railway lines.

In the letter of the Resident 2nd April 1891 ~~20th May~~ it is observed as follows:--

"The Durbar's exercise of control over railway jurisdiction has been efficiently and loyally carried out and no cause of complaint has arisen but since that letter was written the subject has been very carefully considered by the Government of India and it has, I regret to inform you, felt itself compelled to come to a decision adverse to the wishes of the Durbar.

It has been finally resolved that it is absolutely necessary as a question of imperial policy that the Government of India should exercise control over any railway in the Native State which forms part of a line of continuous communication and in order to exercise that control must have jurisdiction over it. Some of the main reasons for this decision are:--

Reasons assigned for cessation of jurisdiction.

(a) The delay in the administration of justice which would occur in cases where the Native States had to apply for Extradition from British territory disappears when the jurisdiction is in the hands of the Government Of India.

(b) Were jurisdiction not ceded, it must be divided, for the Indian Railway Act of 1879 (See Section 1) extends to subjects of Her Majesty on all Railways in Native States, independent of whether jurisdiction over the Railway has or has not been ceded by the Native State concerned.

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(c) In no case could the courts of the

Native State try European British subjects, which term includes most Eurasians (Vide Act X of 1882, Section 4, Clause (u) and, if jurisdiction were not ceded, it would happen that European British subjects and others when jointly charged with the same offence, would be tried apart by different Courts and under different laws.

(d) To lines over which jurisdiction is ceded, the Indian Railway Act is applied, and uniformity of procedure is thus obtained. Were jurisdiction not ceded, each State would have to try to frame an adapted Railway Act, whereby uniformity of procedure on the different lines would be considerably impaired.

There is nothing in the slightest degree derogatory to the dignity of the Mysore State in this decision..... The Nizam's Government you are no doubt aware has already ceded full jurisdiction over the Hyderabad lines. Under these circumstances, His Highness Government will I trust, see the necessity of ceding jurisdiction over the lines now worked by the Southern Mahratta Railway."

15. Even after this final decision was conveyed, the Government of Mysore again pressed for a reconsideration of this decision in their letter of 24th August 1891. That letter expressly refers to the decision of the Government of India regarding the transfer to the British Government of jurisdiction (Civil Criminal and Police) over the Mysore State Railway and gives a brief review of the past history of the State Railway to convince His Excellency that the transfer of jurisdiction

Pressing for reconsideration.

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now asked for will bear with undue and exceptional hardship upon the Durbar. This letter with its enclosure containing the opinion of late Mr. Ricketts followed by the opinion of the Judges of the Chief Court, shows clearly that the high contracting parties were concerned only with the administration of justice in respect of Civil, Criminal and Police and nothing more.

16. The final reply was received from the Resident to the Dewan on 9th April 1892. The Resident stated as follows:--

"That after giving the matter the most attentive consideration they feel unable to make an exception in favour of Mysore in this matter. The principle which requires a cession of railway jurisdiction in all cases except on isolated local lines, is a principle from which the Government cannot depart. The inconvenience which must follow an attempt to apportion railway jurisdiction in different States according to the comparative efficiency of the State administration are too great and obvious to be undertaken. The Government of India willingly admit that if any State in India could be exceptionally treated without grave inconvenience, they would be disposed to look with favour on the request of the Maharaja of Mysore, but as matters stand, they must decline to reconsider their former decision, and they feel confident that His Highness will now accept that decision with the loyalty and good will of which he has given so many proofs."

Final reply.

17. In reply dated 10th June 1892 from the Dewan, it was observed "you are doubtless aware from the previous correspondence on the subject, of the strong feeling His Highness entertains on the

the question and you can therefore readily realise with how much regret he has received the views of the Government of India communicated in the letter under reference. But as His Highness is now required to surrender the jurisdiction he has directed the issue of Notification, a copy of which I beg to enclose herein for your information."

The Government finally asked that the Section from Bangalore to Mysore and Nanjangud be excluded as being an isolated local line and hoped that similar local lines such as those proposed to Shimoga, Hassan and Chikmagalur will be likewise allowed to be excluded on the principle laid down in the Government of India's letter of 9th April 1892.

18. A reply was sent by the Resident on 21st March 1893. The Resident observes as follows:--

Admission.

"It seems to the Government of India unfortunate that the Mysore State should look upon the transfer of jurisdiction for purposes of administrative convenience as in any way derogatory to itself. Nevertheless in deference to the strongly expressed wish of the Durbar, a cession of jurisdiction over this section will not be insisted on. This exceptioncal cession is, I am to say, made on the understanding that if the line from Bangalore to Nanjangud should hereafter form part of a thørough Railway, or if Imperial interests should render such a course desirable, the Durbar must be prepared to transfer jurisdiction to the British Government without further discussion, and no similar concession can be granted in the case of branch lines which may hereafter be constructed as off-shoots to the existing system."

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19. In respect of Kolar Gold Fields Railway a letter from the First Assistant Resident to the Dewan dated 2nd November 1893 was addressed. It states as follows:--

"I am directed to request that the Resident may be favoured with a formal conmmunication from the Durbar ceding, as in the case of the marginally noted lines of the Mysore State Railway, full Criminal and Civil Jurisdiction over the lands occupied by the Kolar Gold Fields Railway.

It is proposed to issue one general Notification including the lines noted on the margin. This will be done by the Government of India in due course when the Foreign Department Notification No.292 I, dated the 5th February 1883, regarding the Bangalore Branch of the Madras Railway will be cancelled. Meanwhile it is understood that the Durbar will arrange for such jurisdictional arrangements as may be necessary on the Kolar Gold Fields Railway."

20. In the letter from the Dewan of Mysore to the Resident in Mysore dated 20th November 1893 His Highness the Maharaja ~~has~~ agreed to transfer to the Governor General in Council full jurisdiction on all lands occupied by the Bangalore Branch of the Madras Railway, Bangalore Harihar line, the Hindupur Bangalore line and Kolar Gold Fields Railway in the Mysore State.

Agreement reached.

21. In reply the First Assistant Resident stated on 26th February 1896 "I am directed to inform you that Her Majesty's Secretary of State has agreed that the administration of justice on the Mysore State Railway from Harihar to Bangalore including the extension ~~of~~ Hindupur

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and on the Kolar Gold Fields Railway should be undertaken by the Courts of the Civil and Military Station of Bangalore and that the Police establishment should be incorporated in the Bangalore force. The marginally cited Notifications have accordingly been issued by the Government of India on the subject, copies of which are enclosed for the information of the Durbar." This is the correspondence that resulted in the cession of Railway jurisdiction in Mysore.

22. If there is one thing that is manifes in the course of correspondence more than another it is that the Government of India asked for only the authority to exercise Civil and Criminal Jurisdiction over the Railway lands and premises and that the Mysore Government zealously refused anything in the nature of a cession of territory such as would confer by itself a local jurisdiction and strongly protested against the grant of any authority to the Government of India to exercise civil and Criminal jurisdiction over the railway lands and premises as requested by the Government of India. All through the correspondence the Mysore Government have stoutly refused to grant the cession of jurisdiction both Civil and Criminal.

Result of correspondence. Conclusion reached.

What has been agreed to by both the high contracting parties is that the administration of justice—both Civil and Criminal—over the Bangalore Madras Railway and on the Mysore State Railway should be undertaken by the Courts of the Civil and Military Station, Bangalore and that the full jurisdiction within the lands in the territory can only refer to the exercise of Civil and Criminal

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Civil and Criminal jurisdiction for the purposes of administrative convenience only and will not affect any sovereign rights of His Highness the Maharaja.

Effect of Notification containing "Full Jurisdiction"

23. It is important to observe that the Notification itself could give no greater authority than has been conferred by the agreement of the parties. That Notification can only give authority to the extent to which the sovereign of the territory namely His Highness the Maharaja has permitted to British Government to make that Notification. So the full jurisdiction that is mentioned in it has only reference to the previous correspondence on the subject, namely, the question of jurisdiction Civil and Criminal for the administration of justice. This is an irresistible conclusion that can be drawn from the correspondence on the subject. This inference is confirmed by the Policy of Imperial Government in respect of jurisdiction over railway lines running in independent States.

Policy of British Government in re: Railway Jurisdiction throughout India.

24. From the history of jurisdiction exercised by the Government of India over the Railway Lines in India it is clear that the Indian Railways especially in the west and central parts of India where Indian States and British Indian territory were interlaced, it had been found to require the exercise of extra-territorial jurisdiction to secure the administration of justice. Different jurisdictions at short intervals along the line of a railway could not have worked effectively to repress crime and maintain order. Moreover the different laws that were prevailing in different Native States were not adequate to deal effectively with the offences and causes

of civil nature in which the European British subjects were involved. Therefore it had been conceded that there should be one jurisdiction only which should be that of the paramount Power. The Government of India laid down a principle which required a cession of railway jursidiction in all cases, except on isolated local lines and they were averse to depart from this established principle. (Vide letter from Sir Henry Prendergast, the Resident in Mysore to the Dewan of Mysore dated 9th April 1892.) In order to secure this object, a plan of cession of territory for the purpose of administering justice on the lines of railway in independent States at one time followed but this plan had been abandoned as inexpedient and the grant of jurisdiction (Civil and Criminal) over the lines comprised within the railway limits had been by treaties and agreements obtained in respect of Native States by the Government of India. In the latter case it is obvious that the lands occupied by the Railway Company were not con- ~~ceded~~ sidered in any sense a British territory. In other words the imperium in these lands vested with the sovereign who granted ~~it~~ these lands. The reason is that the cost of providing these lands for bona fide railway purposes was defrayed at the expense of the State. The ownership in these lands had never been parted to the Government of India. (See the observations of Mr. Asquith Q.C. (now Lord Oxford) and of Mr. Cohen Q.C. in 25 Cal. 20 at p. 26 (P.C.))

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26. The exact amount of jurisdiction as interpreted by the Privy Council in the case of Hyderabad will a fortiori apply to the case

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of Mysore as has been explained above. The Privy Council have held that the authority given by Nizam to the Government of India upon lands within the limits of Hyderabad State Railway is only the exercise of Criminal and Civil jurisdiction and that the railway lands remain part of the dominion of His Highness the Nizam. (25 Cal.20 P.C.). In other words the sovereign rights over the lands occupied by the Railways in the State were never ceded by the grant of full jurisdiction (Civil and Criminal). This interpretation from the highest authority ought 'to clear the air' and apply with equal force to the full jurisdiction given by the Mysore Government over the railway lines, especially when in the correspondence we find that the Government of India have asked for only the same jurisdiction as was given in Hyderabad and Kashmir in accordance with their established principle.

27. The legal interpretation to be placed upon the term "jurisdiction" leads clearly to the conclusion that the sovereign rights to impose taxation and to legislate even has not been taken away by the grant of full jurisdiction for administration of justice. I have already exhaustively dealt with this aspect of the question in my Note dated 8th March 1924 in regard to the claim of surcharge preferred by the Mysore Government. (Vide paras ///m, in my Note). I shall only add a few observations to those already mentioned in my Note.

legal interpretation of the term jurisdiction

28. The Notification of 6th February 1896 was issued in exercise of jurisdiction and of the powers conferred by Foreign Jurisdiction Act 1879 The Assumption of power under this Act is a clear indication that the Government of India had no Imperium nor dominium over these lands. The Foreign Jurisdiction and Extradition Act 1879

Argument based on the exercise of power under Foreign Jurisdiction & Extradition Act 1879.

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declares only the powers granted by Native rulers over their territories and their exercise is regulated by the terms of the grant of such power. There was no necessity to mention this Act in the Notification if there was really a cession of territory such as would confer by itself a local jurisdiction.

29. I shall now examine how the term jurisdiction has been defined and interpreted by the Government of India and acted upon. In Regulation I of 1886 (Criminal Procedure Code) which has received the assent of the Governor General in Council, the expression jurisdiction in Section I of the Regulation has been held to mean jurisdiction 'to enquire into or try a charge'. Plenary jurisdiction as used in Art 17 of the Instrument of Transfer corresponding to Article 16 of the Mysore Treaty, has been interpreted to mean jurisdiction to administer the Criminal Law with reference to British subjects and has no manner of connection with legislation (See 26 Madras p.607 at p.613.)

How Govt of India Laws interpreted the term Jurisdiction!
How the Courts Laws interpreted it!

Under Art. 16 of the present treaty plenary jurisdiction over European subjects has been vested in the Governor General in Council. If the plenary jurisdiction were to include legislation on criminal matters then the Maharaja would have no right to legislate on criminal matters to bind European subjects for plenary criminal jurisdiction has been vested in the Governor-General in Council by the Treaty. That this is not the interpretation is clear from the fact that the Governor General in Council himself has given his assent to the passing of the Mysore Mines, Regulation, Forest, Excise and Municipal Regulations and the amendment of the Indian Penal Code in force in Mysore. The penal provisions of these regulations are applicable to European British subjects

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on the principle that a man in a country is amenable to the criminal laws of that country whether he is a subject of that country or not. (See Wheaton on International Law' Sections 84 and 130). Queen v Ganz L.R. 9 Q.B.D. 93 at p.100) This view of the law, namely, that the Maharaj has power to legislate so as to bind European British subjects is decided by the full Bench of Madras High Court in 26 Madras 607 in spite of the plenary jurisdiction being vested in Governor General in Council. The conclusion is therefore irresistible that jurisdiction has been used in the sense to exercise and try offenders and adjudicate upon the civil rights of the parties only and it has no wider significance than that.

30. Now I shall deal with the question of estoppel. The Government of India have stated clearly that no sovereign right over this tract has been ceded. (Vide Notification of 1877) and that the Government have a right to levy the duty upon goods breaking bulk. This confirms the absolute right of the sovereign to make laws and to impose taxation upon the subjects residing in those lands ceded to British Government for the purpose of administration of justice only.

Declarations at the time of the grant and the subsequent conduct.

Question of estoppel.

31. The Government of India have conceded the right of the Mysore Government to the surplus revenues of the Civil and Military Station, Bangalore which includes the receipts under income-tax in spite of cession of ~~full~~ all jurisdiction over the ceded area.

32. The right to sandal wood growing on railway lands has been conceded. It has been expressly stated by the Government of India in their letter of 26th November 1909 to the Dewan of Mysore that it is not the policy of the Government of India to exercise the fiscal rights which might be con-

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Policy of Govt of India not to exercise fiscal rights to the desire to raise revenues to themselves in these lands.

conveyed to them by a cession of full jurisdiction and they have no desire to raise revenue for themselves in the lands to which the cession relates. This is an important admission showing that they have neither Imperium or Dominium over the Railway lands in Mysore.

33. They have also yielded to our claim to refund the surcharge under the freight tax Act 1917 on the traffic over the railway lines in Mysore owned by the State. This refund is consistent with the sovereign right of His Highness the Maharaja over the tract in question. The declarations made in the correspondence followed by t the other overt acts would therefore estop the Government of India from denying the sovereign rights of His Highness the Maharaja over the lands occupied by the Railways in Mysore.

Claim to Surcharge levied under Freight tax Act 1917, has been Conceded.

34. The question now raised is in respect of Income-tax Regulation. The Income-Tax Regulation imposes a territorial limit either that from which the taxable income is derived must be situate in Mysore or the person whose income is to be taxed must be resident there. In other words the application of the Regulation depends on the territory being part of Mysore dominion. As has been observed above the lands over which the railways are built in Mysore are part of the dominion of Mysore and as such the Income-tax Regulation operates and the jurisdiction to exercise civil and criminal functions ceded to the Government of India will not make that land a British territory in any sense of the term so as to preclude the operation of Mysore Income-tax Regulation over that area. This is rather conceded by the Government of India in that their Income-tax Act is not in force in that territory and in their G.I. No.791 F. dated 26th March 1918 it is laid

Income-Tax Act operates in land belonging to the Sovereign is land forming part of the dominion of Mysore.

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down that the British Income-tax Act has no application to "Frontier Agency tracts and ceded areas in the dominions of princes and chiefs of India in alliance with His Majesty." Hence the contention of the Government of India that the Mysore Government are precluded from enforcing the Mysore Income-tax Regulation in lands occupied by railways in Mysore is quite untenable.

I shall now summarise the conclusions reached:

(1) From the correspondence between the two contracting parties it is clear that what was asked for and what was ultimately conceded was only the exercise of Civil and Criminal jurisdiction over the railway lines running through Mysore territory for the purpose of administering justice i.e., for the purpose of administrative convenience.

(2) There was no ~~xxxxxxx~~ cession of territory to British Government renouncing ~~of~~ any claim of sovereignty over the railway lands. This is in accordance with the established principle of the Imperial Government in respect of jurisdiction exercised over all railway lines in British India and in the Native States, for example Hyderabad.

(3) The jurisdiction as used in the Notification is confined to the exercise of Civil and Criminal functions and does not extend to legislation or taxation. The words "Full Jurisdiction" in the final Notification must be construed to mean only civil and criminal jurisdiction for administering justice which was conceded by the Ruler of the State, as evidenced by the correspondence, for the stream cannot rise higher than the source. If the Notification issued by the Government of India contains anything more than what was agreed to be conveyed by ~~His~~ His Highness, it will be ultra vires and not binding on the Government of Mysore. Notification by the Govern-

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Government of India cannot extend beyond the authority given by His Highness the Maharaja.

(4) The term jurisdiction has been defined and acted upon by the Government of India in the sense to enquire and try an offender and adjudicate upon the causes between the parties.

(5) The declared intentions of the Government of India and their subsequent conduct estop them from denying the right of the Government to exercise the sovereign rights and levy income-tax in the lands occupied by the Railways.

(6) Lastly since the lands over which the railway lines have been built do undoubtedly form part of the Mysore territory, the Mysore Income-tax Regulation applies to that territory.

Sd/- Sastri.
31st August 1926.

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Short note on the operation of the Mysore Income-tax Regulation over Railway lands.

From the correspondence between the two contracting parties it is clear that what was asked for and what was ultimately conceded was only the exercise of Civil and Criminal jurisdiction over the railway lines running through Mysore territory for the purpose of administering justice i.e,, for the purpose of administrative convenience.

There was no cession of territory to British Government renouncing any claim of sovereignty over the railway lands. - This is in accordance with the established principle of the Imperial Government in respect of jurisdiction exercised over all railway lines in British India and in the Native States, for example Hyderabad.(see 25 Calcutta 20, decided by Privy Council)

The jurisdiction as used in the Notification is confined to the exercise of Civil and Criminal functions and does not extend to legislation or taxation. The words "Full Jurisdiction" in the final Notification must be construed to mean only civil and criminal jurisdiction for administering justice which was conceded by the Ruler of the State, as evidenced by the correspondence, for the stream cannot rise higher than the sourc If the Notification issued by the Government of India contains anything more than what was agreed to be conveyed by His Highnes it will be ultra vires and not binding on the Government of - Mysore. Notification by the Government of India cannot extend beyond the authority given by His Highness the Maharaja.

The term jurisdiction has been defined and acted upon by the Government of India in the sense to enquire and try an offender and adjudicate upon the causes between the parties.

The declared intentions of the Government of India and their subsequent conduct estop them from denying the right of the Government to exercise the sovereign rights and levy income-tax in the lands occupied by the Railways.

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Lastly since the lands over which the railway lines have been built do undoubtedly form part of the Mysore territory, the Mysore Income-tax Regulation applies to that territory.

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Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

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I think a reply on the lines proposed may be sent and it may be based on grounds Nos 1, 2, 3, 4 and 6 mentioned in my note of 15.5.26

Dewan) 3/11/26

DEWAN'S OFFICE.
Received on
5 NOV. 1926
Reg. No. 3265

112 Letter No a draft put up for consideration

8/11/26

8/11.

OFFICE OF THE SECOND MEMBER OF COUNCIL
6 DEC. 1926
No. 3810

113 A draft for approval is submitted.

Dewan. 10/11

2nd Member

4.12.

114. Draft revised

Dewan.

The file is returned today

4.12.26

9/12/26

DEWAN'S OFFICE.
Received on
11. DEC., 1926
Reg. No. 4335

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form

77

File taken again to Secretariat and received back with the attached diff. for issue 20/12

115

116 may issue & we may then submit to HH. 13/12

13/12

13/12

Confidential

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(41)

THE PALACE,
MYSORE.

November 1, 1926

My dear Mirza,

103 As you anticipated your file regarding the levy of income tax on railway profits reached me at rather a busy time, and I must confess to having given it a less careful study than it deserved.

104 I don't pretend to be a lawyer, but if the question is to be argued on legal grounds, it seems to me that the argument should commence with the question whether the income under consideration accrues or arises or is received in Mysore. This will raise the further question what is the legal meaning of the term 'Mysore' for purposes of the Income tax Act, and whether the different agreements or notifications can exclude a portion of Mysore from the definition. I don't find that this is argued in the draft.

105 On the other legal questions involved in the case, many weighty arguments are adduced on one side by Mr. Nagappa and the other by Mr. Chandrasekhara Aiyar, but I don't propose to enter into these because I think you have a much stronger case if you leave the law open, or simply state that you are advised that it is not as the Government of India declares.

106 I think you have a very much stronger case, as Mr. Chandrasekhara Aiyar points out, on grounds of common-sense and equity. It is very easy to establish by quotations that the Government of India secured cessions of jurisdiction for administrative purposes and purposes of criminal and civil jurisdiction, and that they have expressly disavowed any intention of securing it for purposes of revenu They have ratified these declarations by their acts in relation to sandalwood and liquor licenses and transfer the surplus revenues in the Civil and Military Station,

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and it is an extraordinary thing that they should have allowed the new administration of the Income tax Department to proceed on exactly opposite lines. There can be no question that, in pressing this claim and the claim to enforce the Government Trading Taxation Act in the Civil and Military Station, they are using jurisdiction secured for administrative purposes to enhance their revenue at the expense of the State which ceded the jurisdiction, in one case by taxing the State itself and the other by taxing a company which operates a railway belonging to the State entirely within the State limits.

107 The question of retiring from even the jurisdiction already exercised over Railway lands is already before the Chamber of Princes, and from the correspondence it would appear that, on the general question, the Government of India are inclined to take a very reasonable view. It seems to me that your best chance of getting a hearing on these two income tax questions is to raise them with the other and press them home as extreme instances in which one department of the Government of India is departing from the attitude taken by ~~the other~~ another. The matter in me on which you would be sure to secure support from other States which would be an important factor in raising it in connection with the Chamber of Princes.

108 In these circumstances I would suggest that your present reply should be a very brief but emphatic statement of the State's point of view, on grounds of equity rather than of law, coupled with the request that further action in both cases should be suspended by both sides on our side until the general question raised by the resolution of the Chamber of Princes had been disposed of.

Yours sincerely,

C.G. Todhunter

Can be for Minister Mr. H.

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(43)

81

G.R.S. III—3]

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

109

I have perused the papers. There is considerable force in what Mr. C. Aiyar says. I think the Papers should be one to put them to shame for grabbing at revenue, after ascertaining that they had no such intention; & claim the revenue that they collect on the analogy of the C.V.L. Stn Surplus. The Court may in which we have been treated should be reserved. There should a sentence to say that we do not admit the ~~validity~~ correctness of their Explanation of Cession of jurisdiction but reserve the point.

In this Connection, the Secretary has to be alert whenever the Chairman Salt Commissioner Salt & Commissioner Salt & Commissioner Salt &

Serial No.

117 Issued as revised and then submit with D.S.N.

7 To The Secy to the Hon'ble the Resident No. PR 555 & 21.12.26 Communicates the views of the Mysore Govt. in the matter & states that the Govt. will be much obliged if the Govt. of India will re-consider their view in the matter & modify the instructions issued to the M & S.M. Ry. Company by the Railway Board &

118 Subd. with a D.S.N. as directed.

KV 21/12 HMK 21/12/26

119 A.D.S.N is submitted for appl or other orders according as it is deemed necessary to submit the case for information of His Highness.

BSR B

d.d. Secy)

2nd Member.

120 Draft may be issued as directed by the Dewan and papers filed. D.S.N. does not explain the case properly as it does not report what reply has been received to the letter sent on Aug 23 What opinion have been taken on the points taken up by the Govt of India and what answer has been sent in the communication addressed to the Resident. Returned without

RECEIVED
22 DEC. 1926
4319

Issued

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(47)

84

Submitted to His Highness.

I submit herewith a Final Note by the Second Member of Council on the subject of Levy of Income-tax on the profits of the railway lines within the State worked by the Madras and Southern Mahratta Railway Company and on the income of the employees of the said Company residing on lands occupied by the Bangalore-Bisanathum Section of the Madras Railway for His Highness's gracious perusal

Camp Shimoga
5th January 1927.

K. Viraraghavachariar

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(48)

Final Note by the Second Member of Council.

85

Subject:—

Levy of income-tax on the profits of the railway lines within the State worked by the Madras & Southern Mahratta Railway Company and on the income of the employees of the said Company residing on lands occupied by the Bangalore-Bisanathum Section of the Madras Railway.

125 In Sir A.R.Banerji's Submission Note of the 29th August 1925, approval of His Highness was obtained to address the Residency to move the Government of India for the refund to the Mysore Government of the portion of the tax payable on the profits in Mysore of the Madras & Southern Maharatta Railway Company chargeable to Mysore Income-Tax during the years 1920-21 to 1924-25.

2. 126 In reply, the Residency, in its letter of 11th June 1926, states that the Government of India hold that the Mysore Government cannot levy any such tax, as full and exclusive jurisdiction of every kind over the lands in the Mysore Territory occupied by the Madras & Southern Mahratta Railway and over all persons and things whatsoever within those lands has been ceded to the British Government and that they have also directed the Railway Company not to pay any further tax to the Mysore Government and require the Mysore Government to refund the amount of Rs 24,693 already collected by them.

3. 127 The question of the right of the State to levy income and super taxes on the profits of the Railway Company and also on the incomes of persons living within the said lands has been carefully considered. The opinions of the Local and Legislative Secretary, Dewan Bahadur Rajadharma Pravina Mr. K.S.Chandrasekhara Aiyar, Retired Chief Judge, and, Sir Charles Todhunter, Private Secretary to His Highness, have also been taken.

128 4. We cannot accept the contentions of the Government of India that we have no right to enforce our fiscal laws on lands given for Railways. The cession of jurisdiction was only for railway purposes and no other view of the cession is reasonable. All rights over the ceded lands except those relating to their use solely for railway purposes vest in the Mysore Government. The cession was not intended for t h e pecuniary benefit of the Government of India or for depriving the State of its legitimate revenues. It is the present policy of the Government of India to reduce even their existing powers over railway lines in Indian States "to the minimum necessary for railway purposes". The ~~present~~ claim of that Government to levy taxes in respect of areas over which jurisdiction only for railway purposes is ceded, is opposed to such policy.

129 5. In view of what is explained above, a reply as in letter No. Pol.555/I.T.13-25-7 dated 21st December 1926, approved by the Dewan, has been sent to the Residency and I beg to submit the papers for the gracious perusal of His Highness.

Bangalore,
3rd January 1927.

M. Venkatta Rao
MEMBER OF COUNCIL.

G.O.

(50) 87

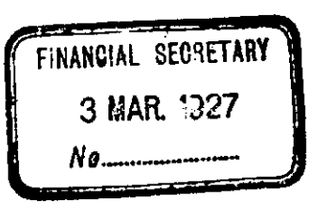
Record of Cases submitted for the Orders of His Highness the Maharaja.

Subject.

Levy of Income-tax on the profits of the Broad Gauge line of the Madras and Southern Mahratta Railway within Mysore limits.



Order.



General and Revenue Secretariat. | F.T. File No. 13 of 1927

Serial No.

To.

~~The Secy~~

131 Subd. At the meeting held in the Dewan's chambers on Wednesday the 13th July 1927, the decision arrived at in regard to this question is noted below:-

132 "The question is pending receipt of reply from the Govt. of India. A D.O. letter to Sir Basil Blackett for getting the matter expedited may be put up after the Viceroy's visit.

~~133~~ "It is presumed that notices calling for return for the year 1926-7 has issued Similar action should be taken for the current year."

133 Subd. ~~file~~ orders with a draft.

WW 24
11/8

134 Fd. Secy } MV. MV.
for approl } 22/8/27

In view of altered circumstances, whether a reference like this is expedient is for consideration.

2nd member } BS 24/8/27

135 I do not quite follow what these letters are. I see no harm in sending a D.O. Comm^r. The draft may be brief. Sir Basil is himself the member in charge of Income Tax and the whole file will be in his office. What is needed is only a short letter referring to our Comm^r. Sent thro' the Resy. Very briefly indicating the point in dispute and asking for early settlement.

24.8.27

136 C/w please draft

MV 24/8/27

GENL. & REV. SECT. 23 AUG. 1927 FINANCIAL BRANCH.

SECOND ... CIL 23 AUG. 1927 No. 1061

2687/24/8 x What is meant by a statement of this sort?

2775/24/8

GENL. & REV. SECT. 24 AUG. 1927 FINANCIAL BRANCH.

NOTE—Contn. sheet

WD 0324—GPB—60,000—24-5-27.

72-B

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App: F. III—2] 89

General and Revenue Secretariat

File No. 13 of 1925 (52)

Serial No. 137

Revised draft Subd. (Typed).

27/8

H. L. Secy) MV 28/8/27

138 2nd number) 28/8 29.8.27 MV

139 Vide para 132. Drawing please— 29.8.27

140 I made speech the date above given

3-9-27

31480/28 3422/828.

2nd number

141) 9.9.27

1361/828 3492/149 828. 1389

8 From The Secy to the Hon'ble the Resident No. 10523 S 17.10.27

Communicates the views of the Govt. of India & requests that arrangements may be made for the adjustment of Rs 24,698, as already required—

FINANCIAL SECRETARY 29 AUG. 1927 No. 2971

1927 No. 1199

SANCTIONED on 2 SEP. 1927 No. 659.

NOTE—Contn. sheet

65

WD 0321—GPB—60,000—24-5-27

(53)

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Letter No.10523/148-1925 dated 17th October 1927 from the Secretary to the Resident in Mysore to the Law Secretary to Government.

----:0:----

Rec'd 20.10.27
Reg. No. 2701

SUBJECT.

LEVY OF INCOME TAX ON THE PROFITS OF THE BROAD GAUGE LINE OF THE MADRAS & SOUTHERN MAHARATTA RAILWAY WITHIN MYSORE TERRITORY.

I am directed to refer to your letter No.Pol.555/I.T.13-25-7, dated the 21st December 1926, and to convey the views of the Government of India on the subject.

2. The Government of Mysore have ceded full jurisdiction over the railway lands in question. They retain no fiscal rights in regard to the lands concerned. The conditions, the Government of India add, are precisely the same in the numerous other cases where British lines pass through State territory, and the Government of India have no doubt that the recovery of Mysore income-tax from these lands is entirely illegal. They have, it is true, made certain concessions to the Government of Mysore in the matter of sandal wood and liquor licenses as pointed out in your letter: but these concessions, it is explained, have been granted not as a matter of right but as a matter of grace.

The Government of India have acquired full jurisdiction over the lands in question and it is, the Government of India state, for them to decide on the extent to which legislation should be applied thereto. The argument contained in paragraph 4 of your letter to the effect that, because a certain "suggestion" (that the powers exercised by the Government of India over railway lands may be reduced to the minimum necessary for railway purposes) has been made, that suggestion constitutes a "policy which it is proposed to pursue", can, the Government of India remark, hardly be accept-

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ed

accepted, especially as the recovery of Mysore income-tax relates to a period prior to the issue of the letter containing the suggestion concerned.

The Government of India point out, moreover, that, apart from the question of jurisdiction over the territory concerned, the profits of the Railway Company, sinc they are received in British India, are taxable under the Indian Income-tax Act (XI of 1922).

3. In the circumstances explained, the Government of India desire that, as already requested, arrangements may be made for the adjustment of the sum of Rs.24,693/- (Rupees twenty four thousand six hundred and ninety three only).

----:0:----

Dewan) M.V. 20/10/27

142 being

I hope a note is prepared on the case.

6045/27 C/S. for early

143 Mr Pol. Secy told me that the Law Dept. of the Govt had expressed their opinion that we had no case.

144 I shall like to see the papers once again

145 JM 20-10-27

146

2nd. member) For perusal 24.10.27

22/10/27

C/W: Very early

PRIVY COUNCIL ECONOMIC BRANCH 2 OCT. 1927 No. 2157

6120/25/10

67

Serial No. 147

Subd. The question has been discussed in paras 1-19 supra & the Law Secy has also furnished his opinion in the matter (vide note of 31.8.26 flagged K).

148 The Govt. of India state that as full jurisdiction over Ry. lands in question has been ceded over to them, the Mysore Govt. retain no fiscal rights in regard to the same. It is also stated that as they have acquired full jurisdiction over the lands in question, it is for the Govt. of India to decide on the extent to which legislation should be applied thereto".

149 The only point requiring re-examination now is "what is the meaning of the expression 'full jurisdiction' occurring in the notification of the Govt. of India".

150 In the notification of 6-Th Septr 1877 it is clearly stated "that full jurisdiction in such lands, short of sovereignty rights shall be ceded absolutely to the British Govt". But in the later notifications of 1883 & 1896 the expression 'short of sovereignty rights' has been omitted. From the correspondence, it is seen that

NOTE. Contn. sheet

General and Revenue Secretariat. File No. 13 of 192 ..

Serial No.

the Govt. of India insisted on the jurisdiction over those lands being ceded to them for purposes of exercising civil, criminal & police powers.

151 If the contention of the Govt. of India be accepted, a sum of Rs 74,673 recovered as tax from the Ry. Company has now to be refunded, as it has been wrongly paid & collected.

152 The file may be referred to the Gen: Secy for noting about the opinion of the Law Deptt of the Govt. of India in the matter referred to in the Dewan's minute of 30.10.27.

Fd. Secy) MV. 2/11/27

What is the object in referring the file to the Genl Secy?

h. c/w: please explain in person MV 4/11

GENL. & REV. SECTT. 4 NOV. 1927 FIN. A. H.

153 To Legal Remembrancer with compliments for favour of his further views — Vide K. in the light of the Residency letter.

Early return of the file is requested, as [illegible]

h 5.11.27 MV

GENL. & REV. SECTT. 26 NOV. 1927 FINANCIAL BRANCH.

GENL. & REV. SECTT. 5 DEC. 1927 FINANCIAL BRANCH.

154 I have no further views to offer. The arguments advanced by Govt of India have, to my mind, been completely met by ours. (Vide Hayle.) I am still of the opinion that the Govt of Mysore have not parted with their Sovereign rights over the area ceded for Railway purposes only & that the Govt of India have in equity bound to pay the Tax collected by them, assuming that they have a right to levy it.

I find that the view taken by you has been fully endorsed by Mr Panniker in his book on the Relations of Indian States with the Govt of India pp 79-80 thereof.

157 Put up h 3/12/27 MV

Note Covering sheet 7/12/27 To Mr. Hallett. Where will he like it? We can take it up when we receive the file. MV 9/12/27

Fd. Secy with compliments

WD 0321—GPB—60,000—31-5-27

Serial No.

158 I submit for perusal and orders the Residency letter communicating the reply of the Government of India regarding the question of the levy of the Mysore Income-tax in the Railway area between Bangalore and Bisanatham, with the further opinion of the Legal Remembrancer

159 A copy of the communication received in the Railway Department re reimbursement to this Government of surcharge levied on the line is also placed in the file. (flag N.)

160 Mr. Panikkar's book to which reference has been made by Mr. Nagappa does not help us much.

161 From the purely legal point of view, the application of the Mysore Income Tax Law to the income accruing in the railway lines in question may not be correct and I do not think Mr. Nagappa will press it now. We cannot, I fear, dispute the position taken up by the Government of India in this respect. But there can be no question that the soverign rights over these lands are reserved to the Government of Mysore. Though it may be left to the Government of India to decide on the extent to which legislation should be applied in the area in question, the utmost that they can claim is that these lands should be treated in

Serial No.

in the same way as the lands given over for specific purposes e.g., the lands of the Indian Institute of Science or the Assigned Tract of the Civil & Military Station. Even on this assumption, the tax on the profits of the lines in question as well as that recoverable from the employees residing in the area cannot be appropriated by the Government of India but should be treated, at the worst, in the same way as the revenues of the Civil & Military Station.

162 Our case may, I think, be pressed on the broad grounds of equity as already suggested by Mr. Chandrasekhara Iyer and Sir Charles Todhunter.

163 Pending final disposal of the question of retrocession of jurisdiction over Railway lands now exercised by the Government of India -- which has to be urged on political grounds separately -- we may request the Government of India to credit the revenue accruing in the area in question to the Proforma account of the Civil & Military station, so that the Mysore Government may share in the surplus revenues.

164 The Railway lands in question are administered by the Civil & Military Station authorities, the laws for the time being in force in the Cantonment are applicable to the area, and the proposal made above will be in keeping with these arrangements.

165 As regards the refund of revenue already

Serial No.

realised by us viz., Rs 24,693/- the Government of India may be approached to waive the claim 'as an act of grace', in the circumstances explained above.

Second Member.) 12.12.27

SECL. 13 DEC. 1927 No. 3289

9041/14/27.

166 The case in which the question of the liability to tax of incomes of officers of the Indian Institute of Science was considered, may be put up for reference. AA.

167 What is the law under which the Government of India claim the right to tax the incomes and profits under consideration? Does the Indian Income-tax Act XI of 1922 apply, as stated by the Government of India in para 2 of the Residency letter dated 17th October 1927, to lands ~~xxxxxxx~~ within Indian States over which jurisdiction for railway purposes has been ceded to the British Government? If the law proposed to be enforced, is the British Indian Act as applied to the Civil & Military Station, does it give the Government of India the right to take the revenue from Income-tax or does it give the Station the right to appropriate this tax?

168 Whatever the strict legal position in regard to the scope of the jurisdiction ceded, the fact remains that, if the ~~xxxxxx~~ claim

Serial No.

claim put forward by the Government of India is correct, that Government would obtain a pecuniary advantage from the cession. There is no justification for that Government to obtain an advantage of this kind and they have also disclaimed any desire to obtain such benefit.

169 I believe that the land between Bangalore and Bisanatham was required to be given by us free of cost to the late Madras Railway Company. The system of demanding free grant of land in Indian States for railway purposes has, I think, been changed. The latest order of the Government of India relating to railway lands and the kind of jurisdiction latterly claimed over them in Indian States, ~~required for railway purposes~~, may be put up.

BB

170 The Government of India state that the profits of the Railway Company are received in British India and so claim the right to tax them. But these profits, if they are received in British India, accrue in Mysore.

171 I think the only reasonable view to be taken of the cession of jurisdiction is that it is only for railway purposes. If, however, the view that it means jurisdiction of all kinds, is correct, I think it is necessary that

we

NOTE.—Contn. sheet

WD 0324—GPB.—60,000—21-5-27

Serial No.

we should take steps to have the position in this respect altered and events are also moving in this direction. It is stated to be the present policy of the Government of India to reduce even their existing powers over lands in the Indian States "to the minimum necessary for railway purposes": vide Residency letter dated 28th July 1926. Claims for complete retro-cession of jurisdiction over railway lines have been put forward by Indian States. We have also pressed this claim in our letter of 16th August 1926. Even in the Residency letter now under consideration, the Government of India allude to the suggestion regarding the change of policy, but only contend that it cannot be applied to the present case "as the recovery of Mysore income-tax relates to a period prior to the issue of the letter containing the suggestion concerned".

172 The point involved in this case is a very important one and I think it is necessary to press for the acceptance of our view.

14.12.27

173 The file re the assessment of the income of officers of the I.F. Service is put up - A.A.

To L.R. with compliments for favour of remarks on the points raised in the second para of the Member's minute — 14/12/27.

General and Revenue Secretariat. | File No. | of 192 .

Serial No. 174

From para 2 of the Residency Letter of 17th Oct 27 it is clear that the profits of the Railway Company ~~are taxable~~ are taxable under Sec 4 of the Indian Income-tax Act XI of 1922, for they are received in British India.

17a Hence Govt of India have indirectly conceded the position that Act XI of 1922 has no operation over the area occupied by the Railway.

17b Under Sec 4, Income-tax Act applies to all incomes - - - accruing or arising or received in British India.

17c In G.O. No 791.F. dated 26th March 1918, it is expressly stated that Frontier Agency tracts & ceded areas are included in the term "dominions of Princes & Chiefs in India in alliance with His Majesty."

[Vide para 34 of my opinion & Domasamudrayya on Income-tax &c p. 47]

17d The main ground on which Govt of Mysore claim the income tax on the profits of the Railway running through Bangalore & Sivanasamudram are, first, this territory though ceded for Railway purposes, is still forms part of Mysore territory & as such H. H. has sovereignty over it & possesses undoubted power to enforce Mysore Income-tax Rules over that area; &

NOTE.—Contn. sheet

W D 0524—G1PB—60,000—24-5 27

General and Revenue Secretariat. | File No. of 192 .

Serial No.

Secondly that since the profits of the Railway accrue or arise in Mysore they are taxable under Sec 4 of Mysore Regln V of 1923.

179 If Mysore Govt imposes a tax, the Railway Co will get a rebate in Br India.

The argument that since the Indian Income-tax Act applies to the case Mysore Govt has no right to impose any tax is unsound in the face of Sec 4, for the income or profits is liable to be taxed either at the place where it accrues or arises or at the place where it is received.

180 Since Govt of India have not imported to apply Indian Act XI of 1922 to the area occupied by Railway & tax the income or the ground that it arises in that there is no necessity to consider the question of appropriation of the Revenue either by Govt of India or by C & M Station.

First Sec
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31/1/28

SECRETARY
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c/w. please put up the papers with the number

NOTE—Contn. sheet 169

General and Revenue Secretariat. 97 File No. 13 of 1925.

Serial No. 9

From

The Secy to the Hon'ble the Resident no. 357/148-1925 & 3.1.28

States that besides the Mysore income-tax wrongly levied on the M & S.M. Ry. Company's share of the profits Mysore State lines, the Mysore Govt. have recovered income-tax from employees of the Railway residing on lands occupied by the Railway & requests that the amount thus recovered viz 57 34-13-0 may be credited to the Govt. of India.

P. T. O

NOTE—Contn. sheet.

W D 0321—GPB—60,000—21-5-27

App. F. III—2]

General and Revenue Secretariat. | J.1 File No. 13 of 1925.

Serial No.

181 Information on the points referred to in the Member's minute of 14-12-1927 is placed in the file.

182 Besides the refund of the sum of Rs 24,693 already asked for, the Government of India have now made a further request for crediting to them the amount of Rs 5,934-13-0 recovered as Mysore Income Tax for the years 1924-25 and 1925-26 on the incomes of the M.& S.M. Railway employees residing on Railway lands. We cannot agree to make these refunds.

183 With a view to facilitate settlement of the line of action we have to take, I have made a brief analysis of the present stage of the correspondence on this important subject and indicated below the points for consideration.

184 I. Profits earned by the M & S.M Railway in respect of the lines in Mysore Territory.

(1) Bangalore-Bisanatham section of the Madras Railway.

185 The Company has not accepted liability to taxation under the Mysore Income Tax Law and not furnished the return for any year.

The correspondence originated in our letter of the 10th September 1925 to the Residency urging our right to tax the income accruing in these Railway Lands. Almost simultaneously

NOTE Contn. sheet

WD 0324—GPB—60,000—24-5-27

Serial No.

simultaneously, the Railway Department preferred a claim for reimbursement of the surcharge levied on traffic in this section on the ground that the levy was of the nature of taxation. (Copy of the Government of India reply on this question is flagged 'B'.)

186 (2). Assessment of profits earned by the Railway from the State lines.

Tax was paid by the company for four years from 1921-22 to 1924-25 and it has been withheld for subsequent years under the instructions of the Railway Board, who have repudiated the liability. The Government of India say that this Government has no right to apply the Mysore Income Tax Law to the Railway lands, whether in Madras-Bisanatham section of the Madras Railway or the State lines worked by the M & S.M. Railway Company

187 The contention of the Government of India is apparently based on the wording of the Government of India Notification of 6th February 1896 in which the cession of the Railway lands was notified. And according to this all laws for the time being in force in the C & M Station of Bangalore shall be deemed to be in force in the aforesaid lands. The Mysore Income Tax law is not applicable to the C & M Station. Full jurisdiction in the Railway lands having been ceded

NOTE: Contn. sheet

WD 0324—GPB—60,000—21-5-27

General and Revenue Secretariat. | 2.) File No. 13 of 1925.

Serial No.

ceded, it is argued that the application of the Mysore Law to the lands in question has no legislative sanction.

188 It is also stated that the profits of the Railway Company are subjected to Income Tax under the British Indian Income Tax law on the ground of their being <u>received</u> in British India.

189 The position of the Government of India in assessing the Company's profits received in their territory cannot be challenged. But these profits accrue in the Railway lands and are liable to Income Tax according to the law applicable to the place of accrual, and the Government of India cannot, in fairness, appropriate to themselves the entire tax revenue. While negativing the right of the Mysore Government to enforce the Mysore Income Tax law in the Railway lands occupied by the Company, the Government of India do not deal with the question as to what Income tax law is applicable for assessing the incomes accruing in the area. This point will have to be threshed out.

190 II. <u>Income of Railway employees residing in lands occupied by the M & S.M. Railway</u>.

Tax on these incomes was recovered from the employees and paid over by the Company to the Mysore Government up to June 1926 and the payment

NOTE Contn. sheet

WD 0321—GPB—60,000—24-5-27

Serial No. 2

payment has been withheld since, under the ~~old~~ orders of the Railway Board. The Government of India have now asked for refund of the tax recovered for the years 1924-25 and 1925-26. Whether tax for previous years has not been paid over to us and if so why the Government of India have not claimed for earlier years cannot be made out. However, the important issue is, what right or justification has the Government of India to levy income tax on the incomes of these employees by deduction at source and appropriate the whole of it/themselves to.

191 From the tenor of the correspondence ending with the Resident's letter of the 9th April 1892, it is absolutely clear that the cession of lands was for 'Railway jurisdiction' and that the Government of India have no manner of right to tax the ~~revenues~~ income accruing in these land for Imperial purposes.

192 With the introduction of the Mysore Income Tax law in the State, the Mysore Government have a right in equity if not in law to the tax revenue at Mysore rates in respect of ~~these~~ incomes accruing in these lands, which are comprised in the Mysore Territory and the reserve sovereignity over which undoubtedly vests in the Government. If the Mysore Income Tax Law

101

NOTE—Contn sheet

WD 0321—GPB—60,000—24-5-27

Serial No.

law cannot, under the existing orders, be applied to the area in question, the only alternative is that the Income Tax law in force in the C & M Station should be enforced and that the revenue realised should be made over to us or credited to the C & M Station. In any case, the Government of India have no valid right to appropriate to themselves the whole of the Tax revenue accruing in these lands, to the exclusion of Mysore.

12

The points arising for consideration are the following:-

(1) Under the existing orders, what is the Income Tax law that should be applied for assessing the income accruing in the Railway lands?

(2) If according to the strict legal position, the Mysore Income Tax law cannot be applied and the incomes are taxed, who is to benefit by the taxation?

(3) So far as the profits of the M & S.M. Railway are concerned, the Government of India contend that they are taxed under the law in force in British India. These profits are subject to tax at the place of accrual if an Income Tax Law is administered in the area in question.

(4) As regards the Railway employees the tax is presumably deducted at source from their incomes. As they are stationed in the Railway

WD 0324—GPB—60,000—24-5-27

Serial No.

Railway lands which are not British territory, the Government of India law cannot strictly be applied. If the law for the time being in force in the C & M Station is enforced, the Income Tax administration should vest in the authorities of the C & M Station and the revenue should accrue to the Station.

(5) In any view of the case, The Mysore State cannot be deprived of its right to share in the income tax revenue of the area in question.

7. The question of retrocession of jurisdiction on Railways will, of course, have to be pressed and we have to fight for the recognition of our full fiscal rights over railway lands, whether on the Broadguage section or the Mysore State Railway. These are general questions to be dealt with in the Railway and Political Departments. So far as the appropriation of tax leviable in respect of income in Railway lands is concerned, the only logical position is that the Mysore Government should have the benefit of such revenue at least at Mysore rates, whatever the Income Tax law that may be applicable to the area.

8. Before a reply is sent to Government of India, it is necessary that we should be clear

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General and Revenue Secretariat.

D) File No. 13 of 1925

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on one or two points:-

(1) Under what legislative sanction is tax now levied on the incomes of the Railway employees?

(2) Whether these incomes are assessed by British Indian Income Tax Officers or by the authorities of the C & M Station.?

A draft to the Residency asking for information is accordingly put up for approval.

2nd number)

To.

10 The Secy to the Hon'ble the Resident
Pol no. 795 S 10.1.28.
calls for information on certain
points.-

This file may be submitted to the Dewan.

Dewan

NOTE—Contn. sheet.

General and Revenue Secretariat. 97 File No. 13 of 1925. 110

Serial No.	
10	~~From~~ To The Secy to the Resident no. Pol 795 & 10.1.28 calls for information on certain points. From The Same Office no. 2868 & 20.3.28 furnishes answers.
11	VR The Residency ~~have~~ in their reply state that the Indian Income Tax Act of 1922 is being applied in the case of the Railway Employees & that the I.T. Officer, Salaries circle, Madras assesses them. Subjd. W 28/3

Para 196.

Secy) MV 30/3

VB For perusal and orders. The L.R will, if approved be requested to examine the legal aspect of the case, and again in view of what he has remarked in paras 175 & 180, and offer his opinion.

2nd member) VB 30/3/28.

VG Yes MVR 31.3.28

VB L.R. with compliments. Memorandum has been received from the Resy which is separately under disposal. VB 2/4

OFFICE OF THE SECRETARY TO GOVERNMENT MADRAS COUNCIL 31 MAR 1928 No. 441/1560

NOTE—Contn. sheet.

WD 0324—GPB—60,000—24-5-27

O P I N I O N.

I am still of opinion that the fiscal ~~jurisdiction~~ jurisdiction over the railway lands in Mysore vests in the State and as such all income, profits or gains arising or accruing thereon is liable for Mysore Income-tax.

Apparently the Government of India have de to apply the Indian Income.tax Act XI of 1922 t the income of railway.employees in the Mysore State, only after the end of June 1926, that is after the present contest between the two Govern ments took some form. I am not aware of any notification issued by Gov-Gen in Council applying this income neither arise nor accrues nor is received in British India and Act XI of 1922 is therefore inapplicable and the Government of India have no right to levy tax on this income. This Act does not apply to pers who earn their profit by working and residing on lands occupied by Railways. For, the lands form part of the Mysore territory and the sovere -ty over the same undoubtedly rests with His Highness. His Highness has never divested himse of this sovereignty and the Government of India have never annexed these lands to British India It is a well known fact that sanction of Parlia ment is required for the Government of India to possess any land as their own and to treat it as subject to their sovereignty. No such sancti has ever been obtained and the Government of Mysore have never ceded the sovereignty over the lands. There is no authority for the position that the powers of levying taxes over the Railwa lands has ever been expressly or impliedly grante to the Governor General in Council by His Highnes And in consequence the Governor General in Council has no power to extend Act XI of 1922 over t is Area. On these grounds we have to resist the claim strenuously, so as not allow any precedent

being created.

I believe Sir Charles Todhunter has dealt with this question of jurisdiction about the Railway lands in his statement prepared for submission to the committee appointed to enquire into the relationship between the Native States and the Governmeht of India.

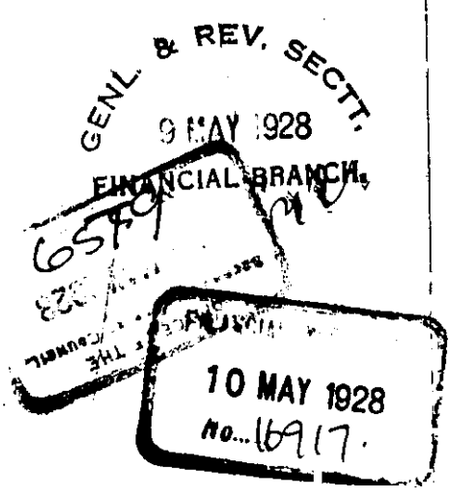
S Lagappa
Legal Remembrancer
8. 5. 28

107

5480/27 4411 App. F. III—2] 75 113

General and Revenue Secretariat. | File No. of 192 .

Serial No.



206 My further opinion is placed below
8/5
Sd
Legal
with Corpts.

207 Another reminder has been issued today for 2nd member. Rec. 9/5/28 10/5/28

208 The Residency letter dated 17th October 1927 is pending reply. We cannot accept the view held by the Government of India and communicated in this letter.

209 The information furnished in the Residency letter dated 20th March 1928 in reply to our enquiry dated 10th January 1928 has clarified the position to a great extent. We are told that the Income-tax Law under which the employees of the M. & S. M. Ry. Company are assessed is the Income-Tax Act No. XI 1922 and that assessment orders are passed by the Income-tax Officer in Madras. This Act applies only to British India and its enforcement in the case of assessees on railway lands is ultra vires as observed by the Legal Remembrancer in his note dated 8th May 1928.

210 If it was contended that the Law applied to the railway lands was the Income-tax Act

No.

NOTE—Contn. sheet.

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General and Revenue Secretariat. | I.T. File No. of 192 .

Serial No.

No. XI of 1922 as extended to the Civil & Military Station, the case would have been different as assessments should have been made by the Income-tax Officers of the Station and the proceeds also credited to the revenues of the Station. That this is not the position, is clearly stated in the Residency letter dated 20th March 1928.

11 The Government of India contend that the profits of the M. & S. M. Railway Company are taxed by them "since they are received in British India and are taxable under the India Income-tax Act No. XI of 1922". This contention overlooks the fact that the profits which we claim to tax are those accruing or arising in Mysore though received in British India and as such coming under the operation of the Mysore Income-tax Law. There is provision in our law introduced with the consent of the Government of India under which relief from double tax is given to an assessee whose profits are subject to the Income-tax Laws of both Governments: vide Section 10 (4) of the Mysore Income-tax Regulation.

12 It is not claimed that the profits of the M. & S. M. Railway made in Mysore come under the operation of the British Indian In-

come

NOTE—Contn. sheet

Serial No.

Income-tax Act as extended to the Civil & Military Station. If this was the position, the assessment should have been made by the Income-tax authorities of the Station and the proceeds also credited to its revenues.

43 The Government of India tell us, vide para 2 of Residency letter dated 17th ~~July~~ Oct. 27 that "the Government of ~~India~~ Mysore have ceded full jurisdiction over railway lands in question: they retain no fiscal rights in regard to the lands concerned." This view is opposed to what is stated to be the policy of the Government of India in regard to the ~~extent~~ Scope and object of jurisdiction obtained by them over lands in Indian States for railway purposes. This policy, as stated by the Standing Committee of the Chamber of Princes, is as under:-

> "In the case of railway lines over which full civil and criminal jurisdiction has been ceded, the policy of the Government of India has been to apply to those lands only such laws as are necessary for the administration of civil and criminal justice, together with the Railway, Post Office and Telegraph Acts. There are cases in which it has been found convenient to apply to such lands the laws of an adjoining British district en bloc, but all such laws are not enforced in those lands and fiscal laws particularly are not enforced, as it is not the policy of the Government of India to raise revenue from lands which are ceded for railway purposes. An Act such as the Excise Act is, however, applied to such lands when it is required to control the consumption of, and traffic in, liquor on railway stations,

Small Type

NOTE—Contn. sheet

or

Serial No.

or to protect the excise revenue of British India. A law such as an Intoxicating Drugs Law may also be enacted for such lands when experience has shown that it is necessary to prevent smuggling through the railways, as much in the interests of the States themselves as of Government. Such a measure, though fiscal, is not revenue-producing, and the Government of India make no profit out of it."

small type

214 In view of this policy, the view which the Government of India have communicated in the Residency letter dated 17th October 1927 in regard to the object and ~~extent~~ Scope of cession of x jurisdiction over railway lands in Mysore is clearly untenable and they cannot justify the appropriation of the tax levied on the incomes of employees of the Company residing on railway lands in Mysore and of income and super taxes on the profits of the Company attributable to its transport business in the State.

215 In the circumstances stated above, we cannot agree to refund the amounts claimed by the Government of India in the Residency letters dated 17th October 1927 and 3rd January 1928, and we have also to press our claim to enforce our own Income-tax Law in respect of profits made in Mysore by the M. & S. M. Railway Company and of incomes of the employees of the Company residing on railway lands in Mysore.

Lt N

NOTE—Contn. sheet

The

111

WD 0324—GPB—60,000—24-5-27

4411 79

General and Revenue Secretariat. I.T. File No. 5315 of 192 . 117

Serial No.

216 The settlement of this question is likely to take a long time and pending it, it is necessary to enforce our law in the usual course by requiring the Company to submit its returns and also by calling upon it to collect the tax due on the salaries of its employees and make it over to us. The non-issue of notices and assessment orders has given rise to controversies in the past and such situations should not be permitted to arise again.

DEWAN'S OFFICE Received on 14 MAY 1928 Reg. No. 7116

FINANCIAL SECRETARY 12 MAY 1928 No. 17039

FINANCIAL SECRETARY 15 MAY 1928 17127

IAI 3 6698

FINANCIAL SECRETARY NOTE—Contn. sheet 15 MAY 1928 No. 17155.

12/5/28

217 Dewan) Noted.

12-5-28

218 We have got to take up a strong uncompromising attitude in this matter, if necessary we should not be disinclined to refer it to arbitration. We are doubtful about the wisdom of this course but we should not allow the Company's to claim again.

13-5-28

2nd member)

219 Draft may be forwarded in consultation with L.R.

15/5/28

15/5/28

220 To L.R with compliments for favour of forwarding an advance

WD 0321—GPB—60,000—24-5-27

General and Revenue Secretariat. File No. 13 of 1925.

Serial No.

221 Draft is put up for consideration
Finl Secy
will comply.
B.N. 23/5

222 2nd member B.S. 23/5/25

223 I have suggested a revised draft
M.M.R. 12-6-25
15
Dewan B.S. 16/6

224. I have put the slight alterations
the map. If the Member approves
of it, it may issue after submission to
His H.
M.M.R. 22/6

1st Member B.S. 23/6

225 Please put up DDM
25/6/25
Today

Subd. with a draft Final note for
consideration
NW
26/6.
26 Fin. Secy 26

NOTE—Contn. sheet.

WD 0324—GPB—60,000—21-5-27

4411 (88) 119

App. F. III—2]

General and Revenue Secretariat. | JT File No. 13 of 1925.

Serial No. 12

To

Mr S.D. Rajagopalachari
Commr of Income Tax

No. H9673 & 30.6.28

Requests him to enforce the Mysore Income Tax law in the usual course by requiring the Company to submit its return & also by calling upon it to collect the tax due on the salaries of its employees.

DEWAN'S OFFICE
Received on
30. JUN. 1928
Reg. No. 8497

Filed with a D.S.N. also. (The final note has been signed by the 1st member of council)

VR 30/6

VR (Secy) 30/6/28

VR (Dewan) B.S. 30/6/28

M.M.D. 1-7-28

NOTE—Contn. Sheet.

WD 01714—GPB—30,000—18-4-23

Submitted to His Highness. 120

2:4

I submit herewith a Final Note by the First Member of Council on the subject of levy of Income Tax on the profits of the railway lines within the State worked by the Madras and Southern Mahratta Railway Company and on the income of the employees of the said company residing on railway lands, for His Highness's gracious approval.

Mirza M. Ismail

Dewan.

Bangalore.

30th June 1928.

115

81

121

Final Note by the First Member of Council.

Subject:—

Levy of Mysore incometax on the profits of the railway lines within the State worked by the Madras & Southern Mahratta Railway Company and on the income of the employees of the said Company residing on railway lands.

I beg to invite reference to my Note dated 3rd January 1927 in which I reported that a communication had been addressed to the Residency urging our claim to levy income-tax on the profits of the Madras & Southern Mahratta Railway Company made from railway lines lying within the State and on the incomes of employees of the Company residing on railway lands. A reply has been received in answer to this communication stating that the Government of India still hold that, as full jurisdiction has been ceded over railway lands, it is not open to us to apply our income-tax law over such lands. This view is not correct and we cannot accept it. It is, therefore, proposed to address another communication on this subject pointing out that the view held by the Government of India is opposed to the object with which jurisdiction over railway lands was ceded to them and that the appropriation of income-tax realised from these lands by that Government is not fair and is not also supported by any legal authority. It is suggested in this letter that the matter may have to be referred to arbitration if the Government of India are not disposed even after considering the present representation, to modify the view held by them. I solicit the gracious approval of His Highness for issuing this letter.

M. N. Krishna Rao

Bangalore,
28th June 1928

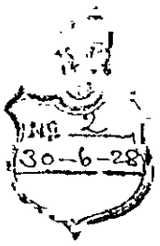
MEMBER OF COUNCIL.

122 83

Record of Cases submitted for the Orders of His Highness the Maharaja.

Subject.

Draft letter to the Residency on the subject of levy of income-tax on the profits of the Madras and Southern Mahratta Railway Company made from railway lines lying within the State and on the income of employees of the Company residing on railway lands.



Order.

236

KRW

3/7/28

C' Sdg

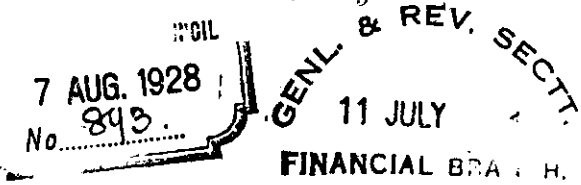
15-7-28

C S
Circular
Mee
6/7

117

D.O.No. C. 24/25-26 OFFICE OF THE COMMISSIONER OF INCOME-TAX IN MYSORE,

Bangalore 9th July 192 8. 123



D 158/H

To L.R with Compliments for advice on the point here up Orders of the S.T.C

L 6.7.28 pw

My opinion is placed in a sealed Cover for Secret with Compts. 6/8

A copy of the opinion may be sent to the S.T.C 1195 and he may be asked to like wise action in accordance therewith — 1st member L 6.8.28 pw

Dear Sir,

Q with letter dt

With reference to your D.O. letter No. Fl. 9673 dated the 30th ultimo, suggesting that the Madras & Southern Mahratta Railway Company should be called upon to submit its returns of income and also to collect the tax due on the salaries of employees on the Bangalore-Bisanatham Section and also the Mysore State Lines, I write to say that the instructions contained in your letter No. Fl. 3528 dated 8th November 1926 were communicated to the Deputy Commissioner of Incometax, Bangalore & Mysore Cities and Taluks, for necessary action. They were reiterated again in my - letter dated 28th July 1927. The Deputy Commissioner of Incometax, Bangalore & Mysore Cities and Taluks issued - notices calling for returns of income of the Company for the years 1926-27 and 1927-28 but the Company returned the - notices for the reason that the Railway Board has ordered the Company to cease to pay Incometax to the Mysore Government.

2. As

119

2. As regards the employees, the Company is bound by statute to collect taxes every month - under Section 18 of the Mysore Incometax Regulation and submit an annual statement in Form No. 5 to the Incometax Officer. As the Company has repudiated the claim of the Mysore Government to the tax on the salaries of employees on the above ground and as there is no data available for the Incometax - Officers to call for returns of income, notices to individual employees have not till now been issued. I am now instructing the Incometax Officer, Bangalore and Mysore Cities and Taluks, to call upon the Company to submit its annual return of employees and also to remit the tax that is due from the employees during the years 1926-27 and 1927-28. In case of their refusal, instructions will be issued to all the Deputy Commissioners of Incometax within whose - jurisdiction those employees are working to issue the notice calling for the return under Section 34 of the Incometax Regulation on the basis of local -

enquiries

enquiries. This step is necessary as otherwise the employees may escape the tax. In this connection, I may state that the tax on the salaries of employees have been received up to the end of May 1926 i.e., for the whole of the year 1925-26. Only the tax for the years 1926-27 and 1927-28 on the salaries of employees are due.

3. In para 3 of your letter, ~~reference has been made to the effect~~ it is stated for that non-passing of assessment orders has given rise to controversies in the past. I may point out that if assessment orders are passed in the years to which the assessment relates, the proceedings for the recovery of tax should be taken within one year from the end of the year in which assessment was made. To avoid this complication regarding limitation, it seems desirable to issue the notices alone, thereby keeping the case alive without proceeding further and passing assessment orders. I trust that Government do not require assessment orders also

130

also to be passed. If it is their intention, I shall be obliged if it is made clear.

Yours sincerely,

C. Rajagopal

B. Srinivasa Iyengar, Esq., B.A., B.L.,
Secretary to the Government
of His Highness the Maharaja of Mysore,
Financial Department,
BANGALORE.

125 86

App. F. III—2]

General and Revenue Secretariat.

I.T. File No. of 192 .

Serial No. 243

I think it is desirable to proceed somewhat cautiously in this matter. The question is a constitutional one and it is under discussion between us and the Government of India. We should not put all the provisions of the Income-tax Law in force in respect of these profits and incomes. There is another point in view of which also it is unnecessary to resort to extreme measures. Neither the Company nor its employees really escape taxation. They are taxed, but it only the Government of India take the taxes levied from them. Should the question be decided in our favour, the case is not one of recovering anything from the Company or its employees, but asking the Government of India to refund to us what they have taken in the first instance. All that is required in the circumstances whether in respect of the Company or of its employees, is simply to issue annual notices to the former in the usual course and if the Company returns them without taking any action, there the matter may stand. The order issued by the Government of India directing the Company and its employees not to pay taxes to us is not considered correct by us and we have asked them to modify it or refer the case to arbitration. If, in the meantime, we put the coercive process of the law into

121

NOTE—Contn. Sheet.

WD 01714—GPB—30,000—18-4-28

158/71

126 & 7

App. F. III—2]

General and Revenue Secretariat.

I.T. File No. of 192 .

Serial No.

into force, it will be misunderstood by the Government of India and it will not also be in harmony with the alternative courses of action which we have ourselves proposed.

244 This is an important matter and ~~the~~ a reply ~~proposed~~ on the above lines to the Commissioner may be issued if it is approved by the Dewan. A copy of our last Comm^n. on this subject to the Resy may also be sent to the Comm^r for information.

M.V.K. Nair 8.8.28

B.S. 8/8/28

Dewan

245

I agree with the first Member We must not force the hands of the Govt. of India but will take all steps for a reply. We must not keep the question alive for a long time

9-8-28

Comm^r's Comm^n may be asked to state their views. We may or may not be able to accept their views but we can only hope to work with them. This is a case in which transferred ministers must show practical endeavour, as this may affect other

MM 9.

9-8-28

Draft

8/8

10

12-22

NOTE—Contn. Sheet.

WD 01714—GPB—30,000—18-4-28

DEWAN'S OFFICE
received on
9 - AUG. 1928
Reg. No. 845

D 675/28 127 8 6

App. F. III—2]

General and Revenue Secretariat. File No. of 192 .

Another D.O. required from the Commr in the subject is placed below as directed.

Serial No. 46

Draft D.O. Subd WW 11/8

Subd. with a typed draft WW 11/8

Typed 11/8 11 C

FIR... SECRETARIAT 11 AUG. 1928 No. 1042

1422 MR

248 1st meeting B.S. 11/8 MR 142

M.W.K. May 13.8.28

249 Issue 17/8 MR

15 D.O. Issued to the Commr of Income Tax

Je 1598 d 15-8-1928

Forwards a copy of Letter No 101 18 d 6-7-1928 Sent to the Residency on the subject and states that all that is required in the case at present whether in respect of the Railway Company or of its employees is simply to issue Annual notices to the former in the usual Course & that, when the Company returns there without taking any action, the matter may stand there

16/8

NOTE—Contn. Sheet.

WD 01714—GPB—30,000—18-4-28

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App. F. III—2] 87

General and Revenue Secretariat. | JT File No. 13 of 1925.

Serial No.

250 Fresh draft to Resy, submitted as per instructions given.

Dewan)

BS. 4

4·10·25



NOTE—Contn. Sheet.

WD 01714—GPB—30,000—18-4-28

129

DEWAN OF MYSORE

D.O. no: 1599 Eccl

90

CARLTON HOUSE,
BANGALORE.

9th October 1928.

My dear Sir Charles,

V51

I shall be grateful for your opinion on the accompanying draft letter to the Residency relating to the levy of the Mysore income-tax on the income of employees of the Madras and Southern Mahratta Railway Company residing on railway lands in Mysore territory, and on the profits of that Company derived from the lines within the State worked by it. It is proposed to substitute a letter on these lines for the one already sent to the Residency. I discussed the matter with Mr. Crump, and he suggested that if we write again asking for reconsideration of the decision of the Government of India, reinforcing arguments already adduced with some others, if possible, he would be able to support our request, without going into the rights of the question. Hence the revised draft. You are at liberty, of course, to improve or recast it in any manner you think best.

Yours sincerely,

Mirza M. Ismail

125

132

191

Park House, Mysore,

17th October 1928.

132

My dear Mirza,

With reference to your d.o.letter No.1599 of the 9th instant on the subject of the claim for taxes on railway incomes I find myself in somewhat of a difficulty in the absence of any reasons which induced Mr.Crump to suggest modification of the draft.

It seems to me that the letter which went in June last, contains an excellent statement of the case, leading up to what I regard as the absolute essential if you are to secure a settlement, namely a demand for arbitration unless they accept your point of view, and I am afraid I must criticise the draft forwarded with your letter in that it leaves out what I regard as the most essential factor of all.

I have tried to put you up, for what it is worth, a draft in milder terms than the original intimating that you must ask them to go to arbitration unless they give way, but I am not at all sure that I have succeeded, for it is not easy to put an ultimatum of that sort in conciliatory language.

Yours sincerely,

CGSmith

15.10

General and Revenue Secretariat. I.T. File No. of 192 .

Serial No.

2882

DEWAN'S OFFICE
10 NOV. 1928
No. 9211

253 Our object is to make another attempt to induce the Government of India to take a reasonable view of the matter. The alternative draft suggested by Sir Charles Todhunter emphasises the claim from the point of view of our right and asks for a reference to arbitration if the Government of India are not prepared to concede the claim. Arbitration is the last remedy and what is now proposed is to make another effort to have the matter settled if possible without resort to ~~FORMAL~~ arbitration. If this attempt also should fail, the remedy of recourse to arbitration will still be available to us. It seems to me, therefore, that, in the circumstances, it is better that our present representation is in the form suggested in the draft letter sent to Sir Charles for expression of his views. I would, however, suggest one addition to this draft; viz., an allusion to the policy of the Government of India on this subject as stated in the Proceedings of the Committee of the Chamber of Princes.

M. V. K. Rao
12.11.28

DEWAN.)

Mr Crump promised me that he will support our representation if put in a proper form & agree with the Members. We can still ask to state a case for arbitration if the Govt of India agree to our request.

10/11

NOTE—Contn. sheet

W.D. 032—GPB—60,000—21-5-28.

General and Revenue Secretariat. File No. of 192

Serial No.

First Member has seen the file.

25a May the draft with the addition in para 2 proposed in ~~blue~~ my handwriting (d. f. a) issue?

25b A demi letter to the Secretary to the Resident requesting that this may be substituted for the letter despatched in July (Pol 18 of 6th July 1928) has also been sent.

Dewan) U.S. 14/11/28

25c The letter may go over the signature of the Chief Secy — also a D.O. regarding the Secy to R. to this effect. This letter for the ~~present~~ main one.

M.M.D. 15-11-28

25d For perusal before issue

For Secy with Compts

N 16/11 H 17.11.28

25e. 17.11.28

(Sgd) 16-

Pol 525 dt 17.11.1928 to the Secy to the Hon'ble the Resident in Mysore

Requests him to move the Hon'ble Resident in the circumstances explained, to the representation made in the matter of the levy of the Income tax on the income of employees of the Madras & S. Mahratta Railway Company residing on Railway lands in Mysore Territory

NOTE—Contn. sheet

WD 0324—GPB—60,000—24-5-27

I.T. Increase 10

FINANCIAL SECRETARY
1 MAR 1929
No.

D 3790

Office of the Dewan of Mysore,

NOTE. 133

Dated 28th February 1929.

Financial Secretary:

160

Subject - Levy of income-tax on the income of the employees of the M.S.M.Railway residing in Railway lands in Mysore territory and on the profits of the Company.

DEWAN'S OFFICE.
1 FEB. 1929
No. 713

We have made a representation on this subject through the Resident in November last. I mentioned the matter to the Political Secretary while I was at Delhi and he thought we had a good case prima facie. I had also spoken to the Secretary (Mr E. Burdon, F. Dept.), re imposing (Mr Sundaram)

M.M.D. Dewan. 28/2

FINANCIAL SECRETARY.

C/W: Submitted for the file

5327

M.N.K. 2/3/29

129

General and Revenue Secretariat. | File No. 13 of 1925.

Serial No.	
17	To. The Hon'ble Sir George Ernest Schuster Finance member g council, Simla Do. no. 1139 & 5.10.29 Invites reference to the representation g the Mysore Govt. in regard to the claim g the State to the income-tax on the earnings g the Ry. Companies in the State.
18	From The Same gentlemen Do. & 16.10.29 Informs that he would take up the matter after his return to Delhi.
19	From The Secy to the Hon'ble the Resident no. 9288/335/1928 & 31.10.29 States that the Govt. g India have come to the conclusion that until the whole case regarding railways is considered, as affecting not only Mysore but all Other States, the present position must be maintained & requests that the Sums credited to the Mysore Govt. may be refunded H: Secy's orders: - Vbl Very Early with previous papers. (Init) B.S. 8/11. Subd. The connected file was subd. to the Legl Remembrancer & it is understood that it has been sent to the Govt. Advocate for opinion. A reminder has been sent Separately

NOTE—Contn. sheet.

WD 066—GPB—30,000—26-7-29

General and Revenue Secretariat. File No. 13 of 1924.

Serial No.

5916 14/11

for the file this return may be awaited.

13.11.24

W 18/11 Sec'y 18/11

Sec'y)

abr Plan for this soon

14/11

263 The connected file was received back today from the Legal Remembrancer. Submd. with reference to the H: Secy's orders on the Residency communication.

A IV R. 11.12.24

W 11/12

Sec'y)

264 Submitted for orders on the proposal of the Resy in para 2 of their letter of 21st Oct 24

BS. 14/12

1st member)

265 I do not think we can agree to pay. We consider our claim to be just and the attitude of the Govt of India quite unreasonable. We may I think say that we propose to make another representation in the matter and take our own time to decide what step we should take next and then may be subject to Devan

Mull 18/12/24

Devan

7374 12/12

A reminder received on the Residency is also

3563

DEWAN'S OFFICE 1929 No. 2786

121

NOTE—Contn. sheet.

R. S. III—3]

ROUTINE NOTES.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

H 2168

DEW'M. E.
25 1929
No 9844

Letter no. B 6468 & 22-11-29 from the Comptroller forwarding copy of a letter received from the Pay'g Account officer, Bangalore in regard to the credit of the amount wrongly credited to the Mysore Govt.

2a) The connected file which was sent to the Legal Remembrancer is understood to have been referred to the Govt. Advocate.

2b) The latter office has not returned it. As it is wanted for reference, a draft to the Govt. Advocate is put up for orders.

WW
25/11

Issue AMR
25/11/29

Issued no. H 3683 & 25-11-29

I think this is a matter in which he may well appeal to the Govt of India against the Govt decision.

I shall be glad if he & Secy & C. Secy will put up a comp. comm. for the Secretary of State — he does so in the Civil & Govt of India's decision in the most strenuous possible manner.

25-12-29

7396 W/P

3931 7-1-30 (1st number)

An interim reply is put up
h
7-1-30

7b) The Residency have asked for the refund of the amount of the recovered (connected file separately).

A reply to this may be sent after the main question is disposed of.

N. B.—Should routine notes be written on small slips the notes must be cyclostyled, or slips pasted on this form

2c) Reply sent by D.O. letter no. 355 Secy to Comptroller

WW 11/12

(8/12/29)

11.12.29

14/12

First number

137

G. R. S. III—3]

ROUTINE NOTES.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

N. B.—Should routine notes be written on small slips the notes must be copied, or slips pasted on this form.

General and Revenue Secretariat.

9 T File No. 13 of 1925.

Serial No. 21

To. The Secy to the Resident
no. Pol 7578 10.1.30
States that Govt. propose to make another representation on the subject.

To.
The Comptroller no. H 45-478 10.1.30
Forwards copy of the above for information.

Subd. with reference to the Dewan's minute 25.12.29 (para 271 supra).

10 JAN. 8723

DEWAN'S OFFICE 10 FEB. 1930 No. 2616

THE 18 FEB. 1930 No. 4920

H Secy
10/1

RD
10.1.30

1st member
Dewan Hon
Chief Secy

BB
1/
16.2.1930

Hon
17/2

M N K Nair
19.2.30

NOTE—Contn. Sheet.

15/FEB.

DEWAN'S MINUTE.

FILE No. 192

DEWAN'S OFFICE.
19 FEB. 1930
No.

139

I. Secy

276 What has become of the letter from the Residency on the Income-tax matter?

MS M.M.S.
13-2-30

ENL. & REV. SECTT.
3496
20 FEB. 1930
FINANCIAL BRANCH.

277 I have explained the Dewan that the Accountant General has been asked by the Resident to depute an officer to attend a further conference in this matter and that the papers will be submitted when the Chief Secy is a couple of days. The Dewan desired that a short note explaining the case should be given to him for the Delhi visit.

15-2-30

278 Note submitted
Dewan

19.2.30

279 I. Secy - Mr. Ryan from Delhi yesterday

8/2

280 P.C. - please see with the papers.
Vide linked file.

19/3.

1924

Subd
MRS
10/3

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NOTE ON THE QUESTION OF INCOME TAX IN RAILWAY LANDS.

The last communication received from the Residency on 31st October 1929 runs as follows:-

"With reference to the correspondence ending with your letter No. Pol. 525 dated the 17th November 1928 on the above subject, I am directed to say that since the Butler Committee in their Report have mentioned, in paragraph 93, receipts from income-tax along with receipts from customs, excise and other sources, the Government of India, while not admitting that income-tax is on the same footing as the other sources of income mentioned by the Committee, have come to the conclusion that until the whole case regarding railways is considered, as affecting not only Mysore but all other States who may be concerned, the present position must be maintained.

I am accordingly to request that the Government of Mysore will be so good as to credit to the Government of India as early as possible, the sums of Rs 24,693/- and Rs 5,934/13/- referred to in Major Evans Gordon's letters Nos. 10523 and 35 dated the 17th October 1927 and 3rd January 1928 respectively."

Rs. 4-4

2. An ad-interim reply has been sent to the effect that a further representation will be made by the Durbar in this matter. The disposal of our claim need not await consideration of the Butler Committee's Report. Our case may be briefly set our as follows:-

3 While the Government of Mysore note with satisfaction that the Butler Committee have recognised the justice of the general claim for the transfer to the Indian States of the net revenue realised in Railway areas within the States, reference is invited to the correspondence that has already passed between the Mysore Government and the Residency on the subject of this letter.

4 Prior to 1920 there was no Income-tax levied

in Mysore and no question of assessing the income earned in Railway lands arose for discussion till then. On the introduction of the Mysore Income Tax Regulation, the Commissioner of Income Tax in Mysore, addressed the Agent of the M. & M. M. Railway Company in the matter of payment of income-tax on the profits earned by the Railway Company from the Mysore State Lines and the Bangalore-Bisanatham section of the Madras Railway which lies within the Mysore Territory. The Agent agreed to the payment of income tax on the profits earned by the Company from the Mysore State Lines worked by it. But in regard to the Bangalore-Bisanatham Section of the Broad Guage Line of Madras which is not a State line he observed that no separate accounts were maintained. And relying on para 2 of the Railway Board's letter No. 1792/Ry. dated 9th June 1913 he contended that the Company was not liable to pay any income tax of the Mysore Government in the absence of orders from the Government of India.

5 In the Durbar's Pol. No. 210 dated 10th September 1925 a communication was then addressed to the Residency for a refund by the Government of India of the Mysore share of the tax levied on the profits of the Company in respect of Broad Gauge Line also from the year 1920-21. An enquiry was then made in the Residency letter No. Pol. 7965 of 29th September 1925 as to why the claim was not put forward earlier than 1925-26 and whether there were any special circumstances in justification of the delay that had occurred. The position was explained in the Durbar's letter No. Pol 279 dated 13th October 1925.

6 In the meantime payment was being made by the Company of income tax on the profits earned on the Mysore State Line and also on the income of employees of the Railway residing on Railway Lines within the State.

7. Residency letter No. Pol 5087 of 11th June 1926 conveyed the opinion of the Government of India that the Mysore Government was precluded from enforcing the Mysore Income Tax Regulation over lands in Mysore Territory occupied by the Company as the Durbar had ceded full and exclusive jurisdiction of every kind over such area and that the Agent was in error in making the payment of Mysore tax levied on the profits of the State Lines worked by the Company for the 4 years from 1921-22 to 1924-25.

8 It was pointed out by this Government in reply that as the cession of jurisdiction was only for purposes connected with Railways, all rights over the ceded lands except those relating to their use for purely railway purposes vest in the Government of His Highness. The Government of India have expressly disavowed any intention of securing the concession of jurisdiction for purposes of revenue, (vide Residency letter No. D.O. 139 dated 25th October 1909). In that letter, it is stated that "it is not the policy of the Government of India to exercise the fiscal rights which may be conveyed to them by a cession of full jurisdiction further than to protect British revenue and they have no desire to raise revenue for themselves in the lands to which the cession relates". The Government of India have ratified these declarations by their acts in relation to Sandal Wood and Liquor Licenses and they have also handed over the surplus revenues ~~of~~ in the Assigned Tract of Bangalore to the Government of Mysore.

9 The Government of India maintain (vide Pol. No. 10523 dated 17th October 1927) that the concessions allowed in the matter of Sandal Wood and Liquor Licenses in the Railway lines have been granted not as a matter of right but as a matter of grace, but the Durbar would be satisfied if a similar consideration be extended in regard

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to the appropriation of the taxes levied on the profits of the Company and on the income of their employees residin in Railway lands, especially in view of the reciprocity arrangement between the Government of India and the Government of Mysore in respect of the appropriation of Income Tax between them on the principle of accrual.

6 According to the Government of India Notification of 6th February 1896 relating to lands over which jurisdiction has been ceded "all laws for the time being in force in the Civil and Military Station of Bangalore shall be leemed to be in force in the aforesaid lands." If in virtue of this notification it be held that the Income Tax Law in force in the Civil & Military Station has applicatio in such area, the tax levied on income arising in it should be credited to the revenues of the Station and included in the calculation of the divisible surplus between the Station and the State.

On these considerations the Durbar venture to urge that the appropriation by the Government of India of the Income and Super Taxes levied in respect of income and profits made on the Railway Lines within the State is not justifiable or consistent with their declared policy as above stated or the nature or scope of the jurisdiction ceded.

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125

DEWAN'S MINUTE.

FILE No. 192

F. Secy

Herewith Sir George Schuster's letter (& enclosure) on the subject of our claim to levy income-tax on Ry. earnings.

I have drafted reply to Sir George. Obviously this draft reply lies with the various points referred to in the departmental note? also the papers of the suit & first memo in the first instance.

The question of the considerations in other words in need not push an appeal to the S of S before action for arbitration. I could discuss the matter with the Finance officer personally & in case the G of I's decision could not be altered.

The Pol. Dept. would support our request for arbitration, I have reason to think.

25/8/30

P.T.O

1209



1 2 L

145

SIMLA,

August 19, 1930.

Dear Sir Mirza,

I am sorry to find that I have not yet sent you the promised reply after the re-examination of your claim in regard to income tax. I think perhaps the best thing that I can do is to send you privately the actual note given to me by the Central Board of Revenue. I had asked them to re-examine the whole matter and in doing so I had written - "Unless any dangerous concession of principle is involved I should like to meet the Dewan of Mysore on this particular point".

I am afraid that after examining the matter on the lines indicated in the enclosed notes from the Central Board of Revenue, I must come to the conclusion that an important question of principle <u>is</u> involved, and that there are objections to settling it in advance of a general settlement. I hope very much that as part of such general settlement we shall get all these matters disposed of in a manner satisfactory to the States, and I am sure that you will appreciate that

Sir Mirza M. Ismail, Kt., C.I.E., O.B.E.,
Dewan of Mysore, Bangalore.

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just now, when we are so shortly to bring the whole question under review, we must be careful about making special concessions.

Yours sincerely,

Enclo:

COPY OF NOTE BY THE CENTRAL BOARD OF REVENUE.

I confess that it appears to me that two important questions of principle are involved in this case.

(1) The general question of the effect of the cession of jurisdiction over Railway lands by a State to the Government of India. This appears to be a very complicated matter, of almost metaphysical subtlety, and it is for the Foreign and Political Department to say whether they consider that a concession to Mysore allowing them to levy income-tax on the lines passing through their territory would be embarrassing purely from this point of view.

(2) The question regarded from the income-tax point of view. Here I feel little doubt that any concession would be embarrassing. I do not know how many other instances there may be in India where British lines run through State territory. They must be very numerous. Even between here and Kalka, as I have pointed out before, the line runs (I believe) through the territory of probably more States than one. Two other instances in which the same question has actually been raised - those of Patiala and Baroda are already known to the Hon'ble Member. If we are to exempt the earnings of these Mysore lines, and the salaries of the employees living on these Railway lands, from Indian Income-tax it can only be done legally, by a Notification under Section 60 of the Indian Income-tax Act. This would at once attract attention and other States would claim similar concessions.

2. I do not gather, however, that this is what the Mysore Durbar ask. They apparently do not contest

our right to tax the profits of the Company at all events, since they are received in British India, but claim that they also should be allowed to tax the profits (and the salaries of the employees) because the Railway line is State territory. The Company would have to claim relief from Double Income-tax, to which it would naturally object.

3. The Company might also raise objections on legal grounds to being taxed by the Mysore Durbar. After all, the question whether the Mysore Durbar can or cannot levy Income-tax in these lands is a legal one, and if we are right in holding, as the Government have held, that the Mysore Income-tax law is not in force in these lands, I am not sure whether by an executive order we <u>can</u> allow the Durbar to enforce it in these lands. That is a question for the Foreign and Political and Legislative Departments.

4. There can be no doubt, I think, that to allow States generally to enforce their Income-tax laws on Railway lands passing through their territory (in most cases that would mean conceding the right to tax the earnings of sections of a continuous line), would bring about an intolerable position. The administrative difficulties which have been summarised elsewhere would be very great.

5. But if we concede this right in one case, and not as part of a general settlement with States generally (we have indicated elsewhere recently on what principles we think that such a settlement might equitably be made) it is difficult to see how we could refuse to concede it in other cases. The fact that the same difficulties in

regard to ascertaining the profits of these lines would not arise here as elsewhere does bot affect the principle at stake.

17-7-1930.

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H.70/Enc a note

1491

Bangalore,

1st September 1930.

FICE

P. O. REC. 1930

My dear Sir George,

I write to acknowledge, with many thanks, the receipt of your letter of August 19, enclosing copy of the note given to you by the Central Board of Revenue on the subject of our claim in regard to income-tax.

It was, of course, not to be expected that that Department, especially Mr.Tottenham (this is a private letter, and I hope you will allow me to be quite frank!) will take any other view but the one he has taken. I am enclosing a note meeting, as I venture to hope to your satisfaction, his arguments against the acceptance of our claim.

The reference in the note to the Political Department rather surprises me, as I believe I am in possession of the views of that Department, who are, if I am not very much mistaken, entirely on the side of the Durbar in this matter. It is on the very ground of principle that we urge a sympathetic consideration of our claim. A valid claim does not cease to be valid simply because it might involve you in difficulties with other States. That I know was the argument that was urged when we put forward our request for a reduction of the subsidy, but what has happened actually? I do not think it is right or fair to treat all cases exactly alike irrespective of the special circumstances of any particular case.

Our request is that our claim may be decided independently of the larger question, for it has really very little to do with it. Ours is a claim urged on clear and definite grounds. It has either got to be accepted or rejected on its own merits. It need not wait to come under review till the whole question is taken up.

150 | 17

Be that as it may, all that I really wanted to mention in this letter was that, on receiving an official reply from the Government of India, we would like either to appeal to the Secretary of State or ask for arbitration, and we hope you will not misunderstand us if such a request is made. This is pre-eminently an issue for arbitration, for it so happens that the Finance Department of the Government of India is both judge and party in this case.

I hope, however, you will allow me to say how really grateful I am for the personal interest you have taken in the matter. While I regret that you should have allowed the purely departmental view to prevail, my appreciation of your great courtesy and kindness is none the less warm and sincere.

With kindest regards,

Yours Sincerely

(Sd) M. G.

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DRAFT REPLY TO THE NOTE BY THE CENTRAL BOARD OF REVENUE.

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Note.

Two important questions of principle are involved in this case:-

(1) The general question of the effect of the cession of jurisdiction over Railway lands by a State to the Government of India. This appears to be a very complicated matter, of almost metaphysical subtlety, and it is for the Foreign and Political Department to say whether they consider that a concession to Mysore allowing them to levy income-tax on the lines passing through their territory would be embarrassing purely from this point of view.

Reply.

The Durbar's contention has always been that the cession of jurisdiction was only for purely Railway purposes. No other view of the cession is reasonable. All rights over the ceded lands except those relating to the use of the lands for railway purposes vest in the Mysore Government. The Government of India have expressly disavowed any intention of securing the cession of jurisdiction for purposes of revenue. Vide Residency letter No. D.O.139 dated 25th October 1909. In that letter it is stated that "it is not the policy of the Government of India to exercise the fiscal rights which may be conveyed to them by a cession of full jurisdiction further than to protect British Revenue and they have no desire to raise revenue for themselves in the lands to which the cession relates". The Government of India have ratified these declarations by their acceptance ~~to~~ the Durbar's Claim ~~rights in relation~~ to Sandal Wood and Liquor ~~licenses in respect of~~ Railway ~~lands.~~ Area

Cession of jurisdiction does not necessarily mean that the Durbar should be debarred from claiming ~~a share in~~ the revenues of the territory ceded or assigned to the Government of India for any particular purpose. We have cited

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cited the instance of the Bangalore Assigned Tract, where although full jurisdiction has been explicitly transferred to the Government of India, the State gets three-fourths of the Surplus Revenue accruing in the Tract. The claim for taxing income accruing in the Railway lands is no ~~less~~ stronger.

According to the Government of India Notification of 6th February 1896 "all laws for the time being in force in the Civil and Military Station of Bangalore shall be deemed to be in force in the aforesaid (Railway) lands". If in view of this notification it be held that the Income Tax law in force in the C & M Station has application in such area, the tax levied or leviable on income arising in it should be no more exempt from payment to the State than are the revenues of the Tract, in respect of which the right of the State has been recognised.

We contend that the disposal of our case should not wait for the disposal of the general question.

The Agent of the Madras and Southern Mahratta Railway Company actually paid to the Mysore Government the income-tax due on the profits of the Mysore State Lines for four years from 1921-22 to 1924-25 and also the income-tax recovered from employees of the Railway residing on lands occupied by it for the years 1924-25 and 1925-26. Further payments have been stopped by the Company

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(2) The question regarded from the income-tax point of view. Here I feel a little doubt that any concession would be embarrassing. .... If we are to exempt the earnings of these Mysore lines, and the salaries of the employees living on these Railway lands, from Indian Income-tax it can only be done legally, by a Notification under Section 60 of the Indian Income Tax Act. This would at once attract attention and other States would claim similar concessions.

2. I do not gather, however, that this is what the Mysore Durbar ask. They apparently do not contest our right to tax

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153 137

Company under the direction of the Government of India who have also demanded the refund of the amounts previously paid. We have pointed out in our last representation dated 24th March 1930, para 11, how the grant of the Durbar's request will not be embarrassing to the Government of India vis-a-vis the other Indian States.

Our arguments may be ~~have been~~ summarised as follows:-

It is stated that these incomes in question are taxed under the British Indian Income-tax Act XI of 1922 on the ground that they are received in British India but this view overlooks the fact that the profits the Government of Mysore claim to tax are those accruing or arising in the State, ~~though received in British India and as such, coming under the operation of the Mysore Income-tax Law.~~ As stated in the note, the question of grant of exemption by a notification under Section 60 of the Indian Income-tax Act does not arise and we do not ask for it.

2. In respect of income-tax matters there is a reciprocity arrangement between the Government of Mysore and the Government of India according to which that Government have agreed that in case of businesses whose head-quarters are in British India but who

154 1?,8

tax the profits of the Company at all events, since they are received in British-India, but claim that they also should be allowed to tax the profits(and the salaries of the employees) because the Railway line is State territory. The Company would have to claim relief from Double Income-tax, to which it would naturally object.

3. The Company might also raise objections on legal grounds to being taxed by the Mysore Durbar. After all, the question whether the Mysore Durbar can or cannot levy income-tax in these lands is a legal one, and if we are

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who have branches in Mysore, a deduction shall be made from the Indian Income-tax payable on the profits of such businesses of the amount of Mysore Income-tax that will be payable on the profits made in Mysore. We claim the extension of the reciprocity arrangement to this case. If the Govt. of an Indian State carrying on a business or trade in British India is subject to tax, it is difficult to understand why a Company carrying on the business of railway transport in an Indian State should not be made liable to the taxation of that State. There is no valid reason why the Company should object to such an arrangement. As already stated above, the Company actually paid tax for some years. But it was only under instructions of the Government of India, communicated in the Railway Department, that the Agent ceased to pay income-tax to the Government of Mysore in respect of the profits of the Mysore State lines and also to recover income-tax from the employees of the Company on our behalf.

3. The Company did not in the first instance raise any legal or other objection to pay income tax on its share of the profits of the Mysore State Lines. But for the direc-tions of the Government of India referred to above, the Company would ~~probably~~ have continued to pay income-tax to the Govt. of Mysore as it did for some years. In fact, it has been admitted by the Govt. of

150 133

are right in holding, as the Government have held, that the Mysore Income-tax is not in force in these lands, I am not sure whether by an executive order we can allow the Durbar to enforce it in these lands. That is a question for the Foreign and Political and Legislative Departments.

of India themselves that ~~it is not~~ the Railway Company ~~but the Government of India that has~~ would not have suffered financially owing to the levy of income-tax by the Mysore Government on the Company's share of the profits of the Mysore State Lines. The Company's objection has therefore no bearing on the decision of this case. The matter is one for settlement between the Government of Mysore and the Government of India.

The Government of India state that it is for them to decide on the extent to which legislation should be applied to Ceded Railway lands. But even if the Indian Income Tax Law as in force in the C & M Station is held applicable to the Railway lands, the Government of Mysore are entitled to ~~share in~~ the revenue accruing in the area and it would not be ~~really~~ fair that the Government of India should appropriate the resulting revenues to their own benefit.

If pending the settlement of the general question there is any technical difficulty to apply the Mysore Income-tax Law in the Railway lands in question there ought to be no objection to the ~~principle of reciprocity above referred to being adopted in the appropriation of the Income and Super-taxes levied in respect of income and profits made on the Railway lands within the State~~ on the ground of their residence in British India. What we ask as a provisional arrangement is that the amount of Mysore tax that would be payable on the profits made and income accruing in the

Granger The Value of the proceeds of the tax levied under the Mysore law.

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160 160

4. There can be no doubt, I think, that to allow States generally to enforce their Income-tax laws on Railway lands passing through their territory (in most cases that would mean conceding the right to tax the earnings of sections of a continuous line), would bring about an intolerable position. The administrative difficulties which have been summarised elsewhere would be very great.

5. But if we concede this right in one case, and not as part of a general settlement with States generally .... it is difficult to see how we could refuse to concede it in other cases. The fact that the same difficulties in regard to ascertaining the profits of these lines would not arise here as elsewhere does not affect the principle at stake.

the Railway lands comprised in Mysore territory may be deducted from the Indian Income-tax and paid over to the Mysore Government.

4. As admitted in the note, the Company's share of the profits of the Mysore State Lines is easily ascertainable and the Agent put forward administrative difficulties in ascertaining the profits only in respect of Bangalore-Bisanatham Section of the Madras Line, and even in this case it would be possible to evolve a reasonable method for determining the profits earned on the Section in Mysore Territory.

5. Mysore stands on a peculiar footing, and as already pointed out, the grant of any special treatment to her will not embarrass the Government of India vis-a-vis with other Indian States. For example the subsidy payable by the Mysore State was reduced by Rs 10½ lakhs, and the grant of this relief to her has not, it is believed created any inconvenient precedent.

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161
143.

App. F. III—2]

General and Revenue Secretariat. | File No. of 192

Serial No.

DEWAN'S OFFICE
1 C. 30

Draft reply to the note is put up.

We had suggested in our letter of the 6th July 1928 to the Residency - vide para 9 - that the matter might be referred to arbitration. But our representation in a revised form was despatched on 17-11-1928 and since then there has been a further reference made to the Government of India on 24-3-30 and this is pending reply,

Obtaining.

29.8.30

FIRST MEMBER

DEWAN.

31-8-30

Type letter to Sir G. Schuster & accompy note for My signature.

Shall like to take steps in the newspapers in this regard. May may perhaps follow me. Shall like to bring my matter to the notice of the Govt.

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NOTE—Contn. Sheet.

WD 01714—GPE—30,000—18-4-28

Recovery of Income tax
from H & S.E. Ry. Lands 4091 2L 15

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App. F. III—2]

General and Revenue Secretariat. | II File No. 13 of 1923. 4

Serial No.	
22	From the Secy & Resident. No: 24 33/33.5-1924 dated 22-3-1930. requesting payment of Rs. 24693 and 5934-13-0 as no representation has been made. A.I.R. Pol. 1044 & Secy to Resident that an appl. cannot be admitted 24-3-30
23.	Pol. 1043-8 24-3-30 to Secy & Resident urging the claims of the Hyderabad to income tax on the profits of the Co & income of Employees
	Subd. No reply has so far been received in the matter.

Financial Secretary) c.s. a 19/1/32

Subd to Law Secy as per Legislation will [illegible] 21 5 30

To Chief Secy in Compliance 20.1.32

Seen and returned with compliments

21/1/32

Returned to Branch 29.5.30

NOTE—Contn. sheet.

WD 066—GPB—30,000—26-7-29

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DEWAN'S MINUTE

FILE No. 193

DEWAN'S OFFICE (1865) 20 MAR. 1932

F. Secy

We must make a further representation to the Govt of India re the matter of the Income-tax on Rly profits.

Would you kindly put up a suitable draft? Please refer to Sir Manubhai Mehta's note on the subject. You will find it among the papers connected with the last meeting of the Consultative Committee.

JM
19-3-32

P.C. Please
Main the papers
from the Secy & Pol Secy
to
19.3.32

There was some delay in obtaining the connected papers from the Press, where they had been sent for printing of the other memos.

to
Pol Secy.
P.T.O

162a

DEWAN'S MINUTE.

FILE No. 193 .

DEWAN'S OFFICE. 685 31 MAR 1932

H. Secy.

Income-tax on My earnings.

Is draft of a further representation to the Govt. of India ready?

I should like it to go soon.

The Viceroy's reference to the question of My Jurisdiction in his speech at the Chamber of Princes is significant.

MV

30-3-32

Draft kept up for consideration

1st meeting at Dewan, 1st / Chief Secy

30.3.32

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Submitted to His Highness.

The accompanying papers relate to the question of the right of the Mysore Government to levy income-tax on the profits of the Madras and Southern Maharatta Railway lines in the State, and on the income of the employees of the company residing in railway lines in the State.

2. Our claim in regard to the above matters is being pressed on the attention of the Government of India for a long time past, but they have so far not given a specific decision. In a letter dated 31st October 1929, the Residency intimated that the Government of India had "come to the conclusion that until the whole case regarding Railways is considered, as affecting not only Mysore but all other States who may be concerned, the present position must be maintained". A further representation was then addressed to the Government of India in March 1930 pointing out the special circumstances connected with this particular question and urging an immediate decision on this point without waiting for the disposal of the general question. Though no official reply has so far been sent to us, it is gathered from demi-official correspondence and my personal discussions with the officers of the Government of India that the disposal of the matter is unduly held up by the attitude of one of the Departments of the Government of India. With a view to expedite the disposal of the matter, it is proposed to address another representation on the lines indicated in the draft put up herewith which may be graciously approved.

Mirza M. Ismail
Dewan

Bangalore,)
5th April 1932.)

Record of Cases submitted for the Orders of His Highness the Maharaja.



Subject.

Draft letter to the Residency on the subject of the levy of income tax on the profits of the Madras and Southern Mahratta Railway lines in the State and on the income of the employees of the Company residing within the Railway lines in the State.

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Order.

~~KRM~~

9/4/32

C. Levy
pm
10-4-32

pm
11/4/32

Levy of incometax on the income of M & S.M. Ry. lines within the State

General and Revenue Secretariat

File No. 31 53 of 1925.

[App. F. III—2

Serial No.	
24	To. Pol 1107 dt 12/9/32 P.P. To the Secretary to the Hon'ble the Resident Regrets that the Durbar's representation be dealt with on its own merits and the Durbar would be highly grateful for an early settlement of the question —

printed as a collection up to this — further correspondence continued in separate file.

NOTE—Contn. Sheet.

WD 70—GBPM—60,000—13-8-31.

Pr. 210 pg/3

FE 13-25-P

DRAFT.

For Consideration

To

The Secretary to the Hon'ble the
Resident in Mysore, Bangalore.

D 10/9/25

S i r,

I am directed to address you on the subject of the levy of income-tax on the profits of the Broad Gauge Line of the --- M.&.S.M. Ry. Co., within the Mysore Territ

2. On the introduction ~~in 1920~~ of the Income Tax Regulation ~~into Mysore~~ in 1920 in my, the --- Commissioner of Income Tax addressed the --- Agent of the M.&.S.M. Ry. Co., in the matter of the payment of income-tax on the profits earned by the Railway Co., from the Mysore State lines and the Bangalore-Bisanatham Section of the Madras Railway which lies within the Mysore territory. The Agent agreed to the payment of Income Tax on the profits earned by the Company from the Mysore State lines worked by them, ~~and suggested~~ the --- ~~adoption, in respect of these lines, of the profits~~

~~profits of the Company as given in the --~~

~~accounts passed by the Government Examiner~~

~~as the basis of assessment~~. In regard, ~~however~~ to the Bangalore-Bisanatham Section of the Broad Gauge line to Madras which is not a State line, he observed that no separate accounts were maintained. He added that in para 2 of the Railway Board's letter No.1792/Ry. of 9th June 1913 (copy enclosed for ready reference) it had been notified that the Secretary of State in Council for India had full and exclusive jurisdiction of every kind over all the lands lying within the State specified in the schedule thereto annexed, occupied by the Railways mentioned in the said schedule and that the Bangalore-Bisanatham Section of the Bangalore-Madras line was included in that schedule, and that therefore the Company was not liable to pay any income-tax to the Mysore Government in the absenc

of orders from the Government of India.

3. ~~I am to observe~~ With reference to the Agent's observations in regard to the payment of Income Tax on the profits earned on the Bangalore-Bisanatham Section I am to observe that the mere fact that no separate accounts are maintained for this portion of the Broad Gauge line can be no reason for non-payment of income-tax and that, in the absence of regular and separate accounts, the profits on this Section should be calculated on -- some fair and reasonable basis as for instance on a pro-rata basis according to the mileage and the total earnings of the Bangalore-Madras line.

In regard to the question of jurisdiction to which the Agent makes reference and an account of which he requires the orders of the Government of India, a perusal of the schedule referred to by the Agent will show that it is a general statement including all

Railway

Railway lines in ~~native~~ Indian States, jurisdiction over which has been ~~credited~~ ceded to the Government of India, and that it includes the State-owned lines in Mysore as well as the Bangalore-Bisanatham Section of the Broad Gauge line to Madras owned by the M.&.S.M. Ry.Co., It will thus be apparent that there are no valid grounds to treat the latter in a manner different to that followed in the case of the former.

in force between the Mysore Govt and the Govt of India in respect of the Cession of jurisdiction over railway lands in the State,

According to the understanding all railway lands in Mysore, jurisdiction over which has been ceded to the Government of India, stand on an equal footing under the terms of the several Notifications of the Government of India issued in the matter of --- cession of jurisdiction over Railway lands in the State. No distinction whatever is drawn in any of these papers between lands relating to State-owned railways and (and) those relating to the lines owned by the M.&.S.M. Ry.

165

Ry.Co. Incometax is paid by the Company on the profits earned on the Metre Gauge lines managed by them for the State. In view of the fact that there is no difference in the nature of the jurisdiction ceded to the Govt. of India in the two cases, it follows that the company are bound to pay incometax on that portion of their profits from the Madras -Bangalore line which represents the profits on the Bangalore-Bisanatham Section. The Agent of the M.&.S.M.Railway has apparently not understood the scope of the notification of the Railway Board. I am further to add that the Company have accepted this view so far as their employees residing on the Railway lands of the Broad-Gauge Section are concerned as the Coy., have been recovering incometax from them and remitting it to the Deputy Commissioner of Incometax for the Cities and taluks of Bangalore ~~and~~ ---

and Mysore when the principle has been conceded in the case of individuals, there can be no doubt whatever as regards its applicability to the Company itself as the Company stands on no higher footing than an individual so far as liability to Income-tax is concerned.

4. The Commissioner of Income Tax has been asked to inform the Company's Agent of the circumstances referred to above and to proceed to assess the Company both for the current year (1925-26) and for the previous year (1924-25) under Section 34 of the Mysore Income Tax Regulation.

5. As the tax due by the Company on its profits on this Section of the Railway for the years previous to those mentioned above viz. from 1920-21, the year in which the Mysore Income Tax Regulation was introduced, to 1923-24 - is apparently included in the tax levied by the Government of India on the entire profits of the Company, I am to request

168

request you to move the Government of India to arrange for the refund, to the Mysore Government, of the portion of the tax attributable to the Company's profits in Mysore and therefore chargeable to --- Mysore income-tax during those four years.

6. From the correspondence leading up to the cession of jurisdiction and the nature of jurisdiction actually conceded by His Highness the Maharaja over ~~the~~ the areas occupied by this and other Railways in the Mysore State, it is clear that the internal rights of sovereignty of His --- Highness the Maharaja except making laws and administering justice (Civil and --- Criminal) over the area are left in tact and that this right extends to the levy of income-tax on the Railway Co.. The grant of surplus revenue from the Assigned Tract and other instances also clearly indicate the recognition of such a ~~this~~

169

right.

I have etc.,

Secy.to Govt,
Rev: Deptt.

H 1552/Ests dated 10.9.25

Copy of the foregoing is forwarded with compliments to the Commissioner of Income Tax in Mysore for information with reference to the correspondence ending with this office letter No.R.438/I.T.20-20-3 dated 21st July 1925. It is requested that necessary steps be taken immediately to proceed to assess the Company with tax for the current year, and also for the year 1924-25 under Section 34 of the --- Income Tax Regulation and that action --- taken be reported to Government. //The --- papers of his office received with his letter No.C.293 dated 17th June 1925 are herewith returned.

By Order,

Secy to Govt.
Rev; Deptt.

10/9/25

All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

9 1307

No. 7965 ENC.
148-1925.

12 OCT. 1925



FROM

Major K. A. G. Evans Gordon,

SECRETARY TO THE RESIDENT IN MYSORE.

Pol. 349

To

The Secretary to the Government of Mysore,

Revenue Department.

Dated Bangalore, 29th September *1925*.

Subject.

Levy of income-tax on the profits of the Broad Gauge Line of the Madras & Southern Mahratta Railway within Mysore limits.

G.T. 13-25-2

SIR,

With reference to your letter No. Pol. 210/G.T. 13-25-1, dated the 10th September 1925, I am directed to state that it is not quite clear why the Mysore Government's claim to a refund by the Government of India of the taxes levied on incomes which accrued during 1920-21, 1921-22, etc., was not put forward earlier than 1925-26. I am to enquire whether there are any special circumstances in justification of the delay that has occurred.

2. I am also to request that a copy of the correspondence with the Agent of the Madras & Southern Mahratta Railway on the subject may be forwarded for reference.

I have the honour to be,

Sir,

Your most obedient servant,

SECRETARY TO THE RESIDENT.

BJ

App.F.VI-G1.]

B650

SUBJECT

Section

File No.

Serial No.

Diary No. of letter replied to

No.

To

General and Revenue Secretariat

( )

, the *192*

Date of issue

Signed by

List of enclosures

Copied by

Examined by

No. Pol. 279 Secret
dt 13.10.25.

The Secretary to the
Hon'ble the Resident
Sir

With reference to the correspondence ending with your letter no. 7965 dt 29th Sept 1925 in regard to the levy of income-tax on the profits of the Broad Guage line of the M & S.M. Ry within the Mysore Territory, I am directed to state that the whole question required examination in view of the contention of the Agent of the Company that they were not liable to pay any income-tax

over

to the Mysore Govt. in the absence of orders from the Govt. of India, as this Section of the Bangalore Madras line was included in the schedule annexed to Ry. Board's letter no. 1792/Ry & 9th June 1913 specifying the lands lying within the States, over which full & exclusive jurisdiction of every kind had been ceded over to the Secy of State. The papers connected with the question having also been mislaid some delay has occurred in making the reference.

2. I am also to forward copies of communications received from the Agent in the matter as required, from which it will be seen that the Comm^r of Income Tax in Mysore had addressed the Agent of the Company so far back as Nov 1920 but could not go ahead as the Agent raised political difficulties in the matter

3. In this connection, I am to state that what is now asked is only a refund by the Govt of India (subject to approval) of the posts

12

G. R. S. G/33]

GENERAL AND REVENUE SECRETARIAT.

(*Continuation sheet draft form.*)

of the ~~profits of the~~ tax attributable to Company's profits in Mysore (which is chargeable to Mysore income-tax), as the same has been included in the tax recovered by the Govt. of India on the entire profits of the Company in matters concerning the two Govts.

I have t

Secy to Govt
Revs.

We need not state at this stage what is the nature of relief to be given

WD 2230—GPB—1,00,000—23-7-20

173

21766

13

In reply refer to
No. C.241 of 25-26
Enc.

OFFICE OF THE COMMISSIONER OF INCOME-TAX IN MYSORE,
Bangalore, 24th Nov: 5



DIARY NO. 2506 C

V. R. Thyagaraja Iyer, Esq., M.A.,
~~K.C.N. IYENGAR, ESQ., B.A.,~~
Commissioner of Income-Tax in Mysore.

To

B. Srinivasa Iyengar, Esq., B.A., B.L.,
Secretary to the Government of Mysore,
Revenue Department, Bangalore.

Sir,

With reference to your memo No. Fl.1532 dated the 10th September 1925, I have the honour to state that the Deputy Commissioner of Income Tax, Bangalore and Mysore Cities and Taluks has assessed the Madras and Southern Mahratta Railway Co. for the Broad Gauge section (Bangalore to Bisanatham) for the year 1924-25 on an income of Rs 88,971 calculated on the pro rata basis and for the Metre Gauge section and Broad Gauge section for the year 1925-26 on an income of Rs 92,196 and Rs 1,22,135 respectively or in all Rs 2,14,331.

I have the honour to be,
Sir,
Your most obedient servant,

Assistant Commissioner,
For Commissioner of Income Tax.
(Absent from Station).

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52163

I. T. 66]

In reply refer to
No. C.241 of 25-26
Enc. one

14

OFFICE OF THE COMMISSIONER OF INCOME-TAX IN MYSORE,

Bangalore 9th June *192* 6

9.F 13-25

DIARY NO. 4888

19 — 19

Section.

File No.

Serial No.

GENL. & REV. SECTT.
Bg. 21
10 JUN. 1926
G. D. SECTION.
FINANCIAL SECRETARY

13. JUN 1926

From B. Ramaswamaiya, Esq., B.A., B.L.,

COMMISSIONER OF INCOME-TAX IN MYSORE.

To

C. Rangnatha Rao Saheb, Esq., B.A., B.L.,
Secretary to the Government of Mysore,
Revenue Department, Bangalore.

Sir,

In continuation of correspondence ending with this office letter No.C.241 of 25-26 dated the 24th November 1925, re: assessment of the profits of the M. & S. M. Railway Company Ltd., Broad Gauge Section, I have the honour to state that the Chief Auditor and Accountant of the Madras and Southern Mahratta Railway, Madras has, in his letter No.51227 dated 8th June 1926, intimated to me that in accordance with Railway Board's orders, no further recoveries in respect of Mysore Income Tax on salaries of Railway employees will be effected and that the Company will make no further payments of income.tax and super.tax on its share of surplus profits to the Mysore Government as by virtue of the grant by the Government of Mysore of full civil and criminal jurisdiction to the Government of India over the railway lands in Mysore comprised in the Mysore State Lines, the Government of Mysore is precluded from enforcing the Mysore Income Tax Regulation over the said lands.

This is a very important & serious matter for perusal before working up the Companies case upon it provisionally after great discussion

2. Copies of the Chief Auditor's letter and of its enclosure are sent herewith for information. I have acknowledged the receipt of the letter as desired by the Chief Auditor and Accountant.

3.

2nd Remind
Seen. Please work up very early - a full note may be put up

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3. I solicit the orders of Government for guidance and further action in the matter by this office.

I have the honour to be,
Sir,
Your most obedient servant,

S. Ramaswamy

Commissioner of Income Tax.

M.S.

Letter No. 51227 dated 8th June 1926 from the Chief Auditor & Accountant, Madras and Southern Mahratta Railway Co., Ld., Park Town, Madras to the Commissioner of Income Tax in Mysore, Bangalore.

INCOME TAX - M. & S. M. Railway Lines passing through Mysore State.

I have the honour to forward herewith a copy of Railway Board's orders No.3167.F. dated 10th May 1926 to the Agent, M. & S. M. Railway and to state that, in accordance therewith, no further recoveries in respect of Mysore Income tax on salaries of Railway employees will be effected and that this Company will make no further payments of Income tax and super tax on its share of surplus profits to the Mysore Government. I would further add for your information that none of our employees, whose salaries are liable to tax, are paid in Mysore Territory as now defined. An early acknowledgment of this advice is requested.

Letter No.3167.F. dated the 10th May 1926 from the Secretary, Railway Board, Simla, to the Agent, M. & S. M. Railway, Madras.

INCOME TAX - MYSORE STATE LINES.

It has come to the notice of the Government of India that M. & S. M. Railway Company is paying income-tax to the Government of Mysore in respect of the profits earned by the Company from working of the Mysore State Lines and is collecting income-tax from its employes residing on railway lands in Mysore over which jurisdiction has been ceded. As by virtue of the grant by the Government of Mysore of full civil and criminal jurisdiction to the Government of India over the Railway lands in Mysore comprised in the Mysore State Lines, the Government of Mysore is precluded from enforcing the Mysore Income Tax Regulation over these lands, I am directed to request that you will take steps at once to cease to pay income-tax to the Government of Mysore in respect of the profits of the Mysore State Lines and to cease to recover income-tax from the employes of the Madras and Southern Mahratta Railway Company on behalf of the Government of Mysore unless the employes are paid in Mysore territory.

'Copy'

For Commissioner of Income Tax

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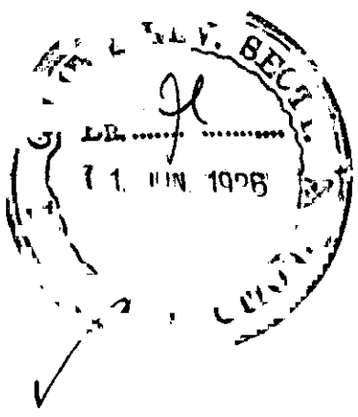
All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

52319

No. 1027 ENC. / 148-1925.

FROM

Major A. A. G. Evans Gordon,
SECRETARY TO THE RESIDENT IN MYSORE.



To

9.T 13-25 Pol. 1403

The Secretary to the Government of Mysore,
Revenue Department.

Dated Bangalore, // J u n e *1926.*

Subject.

Levy of income-tax on the profits of the broad guage line of the Madras & Southern Mahratta Railway within Mysore territory.

SIR,

I am directed to refer to your letter No.Pol.210/Ex.13-25-1, dated the 10th September 1925, and to convey the reply of the Government of India on the subject.

2. It appears to the Government of India that, as the Mysore Government have ceded full and exclusive jurisdiction of every kind over the lands in their territory occupied by the Madras & Southern Mahratta Railway and over all persons and things whatsoever within those lands, they are precluded from enforcing the Mysore Income-tax Regulation in such lands. The Agent, Madras and Southern Mahratta Railway, was, the Government of India state, accordingly in error (1) in permitting the Mysore income-tax to be recovered from the employees of the Railway residing on lands occupied by the Bangalore Bisanatham section of the Madras Railway, where the Government of Mysore, as stated above, have no jurisdiction and their Income-tax Regulation cannot operate, and (2) in agreeing to pay income-tax on the profits earned on the Mysore State lines over which full jurisdiction had been ceded to the British Government.

3.

3. It is not, it is added, the Railway Company but the Government of India that has suffered financially owing to the levy of income-tax by the Government of Mysore on the Company's share of the profits of the Mysore State lines. That share, it is explained, is included in the Company's income on which British Indian income-tax has been levied and in accordance with the mutual agreement between the Government of India and the Mysore Governmnnt in regard to relief from double income-tax, the whole of the Mysore tax wrongly levied on the Railway Company's share of the profits of the Mysore State lines has, it is stated, been refunded or adjusted in favour of the Railway Company by the Income-tax authorities in Madras. The amounts thus wrongly refunded or adjusted in the past 4 years are as follows:-

	Rs.	A.	P.
1921-1922	7,073	4	0
1922-1923	2,803	12	0
1923-1924	7,128	8	0
1924-1925.	7,688	0	0
Total.	24,693	8	0

4. The Government of India wish this aspect of the question to be brought to the notice of the Mysore Government, and they request the Mysore Government to arrange to make good to the Government of India this sum of Rs.24,693/-.

5. I am also to forward to the Government of Mysore a copy of a letter No.3167-F., dated the 10th May 1926, from the Government of India in the Railway Department to the Agent, Madras & Southern Mahratta Railway Co., regarding income-tax on the Mysore State lines.

I have the honour to be,
Sir,
Your most obedient servant,

Major.

SECRETARY TO THE RESIDENT.

BJ

19

Letter No.3167-F., dated the 10th of May 1926, from the Secretary, Railway Board, Simla, to the Agent, Madras & Southern Mahratta Railway.

---:O:---

INCOME-TAX MYSORE STATE LINES.

It has come to the notice of the Government of India that the Madras and Southern Mahratta Railway Company is paying income-tax to the Government of Mysore in respect of the profits earned by the Company from the working of the Mysore State Lines and is collecting income tax from its employees residing on railway lands in Mysore over which jurisdiction has been ceded. As by virtue of the grant by the Government of Mysore of full civil & criminal jurisdiction to the Government of India over the railway lands in Mysore comprised in the Mysore State lines, the Government of Mysore is precluded from enforcing the Mysore Income-tax Regulation over these lands, I am directed to request that you will take steps at once to cease to pay income-tax to the Government of Mysore in respect of the profits of the Mysore State Lines and to cease to recover income tax from the employees of the Madras and Southern Mahratta Railway Company on behalf of the Government of Mysore unless the employees are paid in Mysore territory.

---:O:---

"C O P Y"

REGISTRAR, RESIDENT'S OFFICE.

19

D.O. letter No.139 dated the 26th October 1909. In this letter, the Resident disclaimed any intention of exercising fiscal rights which may be conveyed to the Government of India further than to protect British revenue. They have ratified these declarations by their acts in relation to sandalwood and liquor licenses and transfer of the surplus revenues in the Assigned Tract of Bangalore. There can be no question that in pressing this claim they are using jurisdiction secured for administrative purposes to enhance their revenue at the expense of the State which ceded the jurisdiction.

The appropriation by the Government of India of the income and super-taxes in respect of income and profits made on the Railway lines within the State is, therefore not justifiable or consistent with the nature or scope of the jurisdiction ceded

The question of retroceding to Indian States even the jurisdiction now exercised by the Government of India is under consideration. I am, in this connection, to invite reference to your letter No.6472/184-1888 dated 28th July 1926 in which it is stated that it is under contemplation "to reduce to the minimum necessary for railway purposes" the powers now exercised by the Government of India. Any claim by the Government of India to levy, as in the case now under discussion, taxes in respect of areas over which limited jurisdiction for railway purposes alone is now exercised, is opposed to the policy which it is proposed to pursue hereafter

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as indicated in your letter referred to above.

In the circumstances stated above, the Mysore Government will be much obliged if the Government of India will kindly reconsider the view expressed in your letter under reply and modify the instructions issued to the Madras and Southern Mahratta Railway Company in the Railway Board's letter No.3167 F. dated 10th May 1926 to the Agent of the Company.

In view of the time likely to be taken up in settling this matter by correspondence with the Government of India, and with a view to prevent any claim by the Company for relief from the levy of tax on the ground that the demand for it was not made in time, the Company was requested to submit its return of income for the year 1925-26, but it has declined to do so. A copy of the Agent's letter No.B.51227 dated 23rd November 1926 to the Deputy Commissioner of Income-tax in Bangalore is enclosed for information.

I have etc.,

Secretary to Government,
Local & Legislative Departments.

No Pol.555 E/one 20
9.4.13.24.7.

To

D 21-12-1926

The Secretary to the

Hon'ble the Resident in Mysore.

Sir,

I am directed to refer to the correspondence ending with your letter No.5087, dated 11th June 1926, regarding the levy of income-tax by the Mysore Government on the profits of the lines within the State worked by the Madras and Southern Mahratta Railway Company, and on the income of the employees of the Railway residing on lands occupied by the Bangalore-Bisanatham Section of the Madras Railway, and to state as follows:-

It is stated in the letter under reply that "it appears to the Government of India that as the Mysore Government have ceded full and exclusive jurisdiction of every kind over the lands in their territory occupied by the Madras and Southern Mahratta Railway and over all persons and things whatever within those lands, they are precluded from enforcing the Mysore Income-Tax Regulation in such lands." The Government of Mysore consider that this view of the position is not correct. The cession of jurisdiction was only for administrative purposes connected with railways, and all rights over the ceded lands, except those relating to their use for purely railway purposes, vest in the Government of His Highness. They have expressly disavowed any intention of securing it for purposes of revenue - Vide Residency

All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

SECON ...CIL
20 OCT. 1927
No. 2093.

No. 10523 ENC. 10679
148-1925.

9.T 13-25-8

Pol 503

FROM

Major K. A. G. Evans Gordon,

SECRETARY TO THE RESIDENT IN MYSORE.

GEN. & REV. SECTT.
FILE 71
17 OCT. 1927
G. D. SECTION.

To

The Secretary to the Government of Mysore,

Law Department.

Dated Bangalore, 17th October 1927

Subject.

LEVY OF INCOME TAX ON THE PROFITS OF THE BROAD GAUGE LINE OF THE MADRAS & SOUTHERN MAHRATTA RAILWAY WITHIN MYSORE TERRITORY.

SIR,

I am directed to refer to your letter No. Pol. 555/I.T.13-25-7, dated the 21st December 1926, and to convey the views of the Government of India on the subject.

2. The Government of Mysore have ceded full jurisdiction over the railway lands in question. They retain no fiscal rights in regard to the lands concerned. The conditions, the Government of India add, are precisely the same in the numerous other cases where British lines pass through State territory, and the Government of India have no doubt that the recovery of Mysore income-tax from these lands is entirely illegal. They have, it is true, made certain concessions to the Government of Mysore in the matter of sandal wood and liquor licenses as pointed out in your letter: but these concessions, it is explained, have been granted not as a matter of right but as a matter of grace.

The Government of India have acquired full jurisdiction over the lands in question and it is, the Government of India state, for them to decide on the extent

FINANCIAL SECRETARY
21 SEP. 1927
No. 9958

extent to which legislation should be applied thereto. The argument contained in paragraph 4 of your letter to the effect that, because a certain "suggestion" (that the powers exercised by the Government of India over railway lands may be reduced to the minimum necessary for railway purposes) has been made, that suggestion constitutes a "policy which it is proposed to pursue", can, the Government of India remark, hardly be accepted, especially as the recovery of Mysore income-tax relates to a period prior to the issue of the letter containing the suggestion concerned.

The Government of India point out, moreover, that, apart from the question of jurisdiction over the territory concerned, the profits of the Railway Company, since they are received in British India, are taxable under the Indian Income-tax Act (XI of 1922).

2. In the circumstances explained, the Government of India desire that, as already requested, arrangements may be made for the adjustment of the sum of Rs.24,693/- (Rupees twenty four thousand six hundred and ninety three only).

I have the honour to be,

Sir,

Your most obedient servant,

Major.

SECRETARY TO THE RESIDENT.

GT 13-25-9 No. 35
148-1925.

F D 3130

16675 25

pol. 848.

From

Major K. A. G. Evans Gordon,

Secretary to the Resident in Mysore.

To

The Secretary to the Government of Mysore,

Law Department.

Dated Bangalore 3rd January 1928.

Mysore income-tax recovered by the Mysore Government from the employees of the Madras & Southern Mahratta Railway Company.

Sir,

I am directed to refer to the correspondence ending with my letter No. 10533/148-1925, dated the 17th October 1927.

2. It has been represented to the Government of India that besides the Mysore income-tax wrongly levied on the Madras and Southern Mahratta Railway Company's share of the profits of the Mysore State lines, the Mysore Government have also recovered income-tax from employees of the Railway residing on land's occupied by the Railway. The amounts are:-

For 1924-25	Rs.2,679/5/-
For 1925-26	Rs.3,255/8/-

a detailed list is attached to this letter.

3. These sums have been allowed as a deduction from the amount Income-tax due by the employees and the Government of India have now to re-coup themselves. I am accordingly directed to request that the Mysore Government may be so good as to remit to Government of India with the sum of Rs.5,934/13/-.

I have the honour to be,

Sir,

Your most obedient servant,

Secretary.

Pol. 795 - dated 10-

9-7 13-2

To

The Secretary to the Hon'ble
the Resident in Mysore,
Bangalore.

Sir,

Subject:-

Refund of Income Tax recovered by the Mysore Government from the employees of the M & S.M. Railway.

With reference to correspondence ending with your letter No. 35/148-1925 dated 8/1/26 requesting this Government to credit the Government of India with the sum of Rs 5934-13-0 being Mysore Income Tax stated to have been ~~recovered~~ levied on the incomes of certain employees of the M & S.M. Railway for the years 1924-25 and 1925-26, I am directed to state that the Mysore Government will be much obliged if information be kindly furnished to them on the following points

(1) Whether Income Tax at British Indian rates is not recovered at source from the incomes of these Railway employees?

(2) If so, under what ~~legislative sanction~~ law is the deduction made?

(3) By whom are the incomes of these employees assessed:; whether by the Income Tax Officers in British India or the Revenue of the C & M Station?

(4) If the C & M Station Income Tax Officers assess the incomes of these employees, is the Revenue credited to the ~~Government of India?~~ Revenues of the station?

I have etc.,

6.1.28

Finl. Secretary to Govt.

All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name

SECRETARY
6 JULY 1928

No. 6355 / 335-1928 ENC.

27
00506

Dol. 15

FROM

A. C. Lothian, Esquire, I.C.S.,

SECRETARY TO THE RESIDENT IN MYSORE.

D 117/71

To

The Secretary to the Government of
His Highness the Maharaja of Mysore,
Financial Department.

Dated Bangalore, 5 July 1928.

Subject.

Mysore income-tax recovered by the Mysore Government from the employees of the Madras & Southern Mahratta Railway Company..

SIR,

I am directed to refer to Major Evans-Gordon's letter No.35/148-1925, dated the 3rd January, 1928, and to state that the Government of India would be glad to be informed whether the Mysore Government have credited them with the amount specified in paragraph 3 thereof. If this has not been done already, it is requested that necessary arrangements may kindly be made to do so as early as may be convenient.

2. The favour of an early reply is solicited.

Reply with so long
1st meeting 6/7/28.
Issue
6/7/28
Issue and then Cancelate
6/7/28

I have the honour to be,

Sir,

Your most obedient servant,

A C Lothian

SECRETARY TO THE RESIDENT.

BJ

20 MAR 1928 4549

From

No. 2868
148-1925. Pol. 1166.28

D 4411

GEN. 21. 1928 H

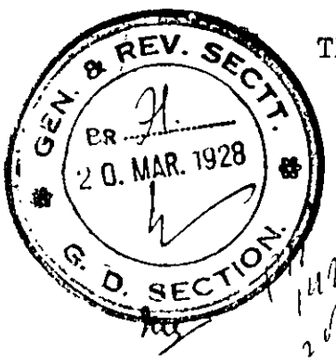
Major K. A. G. Evans Gordon, FINANCIAL BRANCH.

Secretary to the Resident in Mysore.

To

The Secretary to the Government of Mysore,

Financial Department.



F.T. 13-25-11

Dated Bangalore 20th March 1928.

Mysore income-tax recovered by the Mysore Government from the employees of the Madras and Southern Mahratta Railway Company.

Sir,

I am directed to refer to your letter No. Pol.795/I.T 13-25-10, dated the 10th January 1928 in which the Mysore Government ask for information on the following points:-

(1) Whether income-tax at British Indian rates is not recovered at source from the incomes of the railway employees in question.

(2) If so, under what law is the deduction made?

(3) By whom are the incomes of these employees assessed whether by the Income-tax Officers in British India or those of the Civil and Military Station.

(4) If the Civil and Military Station Income-tax Officers assess the incomes of these employees, is the revenue credited to the revenues of the Station?

The answers are

(1) Y e s.

(2) Under the Income-tax Act (XI of 1922).

(3) By an Income-tax Officer in Madras (Salaries Circle).

(4) Does not arise.

I have the honour to be,
Sir,
Your most obedient servant,

C. Srikanta Iyer

SECRETARY TO THE RESIDENT

X.9673 & 3846/26
GT 13-25-12
29

Dear Mr.Rajagopalachari,

Please refer to correspondence ending with Mr.Ramaswamiah's letter No.C.241 of 25-26 dated 9th June 1926 re. assessment of the profits of the M.&.S.M. Railway Company and of the income of the employees residing on lands occupied by the Railway. The question is still under correspondence with the Government of India.

SC 5 in the file

2. Pending its final settlement which is likely to take a long time it is necessary to enforce our law in the usual course by requiring the Company to submit its returns and also by calling upon it to collect the tax due on the salaries of its employees, on the Bangalore Bisanatham Section and ~~later~~ also on the Mysore State lines worked by the Company and make over the collection to us.

3. The non-issue of notices and assessment orders has given rise to controversies in the past and such situations should not be permitted to occur again.

4. I am to request you to take immediate action in this behalf.

Yours Sincerely,

B J. 26/6/28

S.P. Rajagopalachari, Esq., B.A., B.L.,
Commissioner of Income Tax.

1914

27.6.28

Pol. 18 dated 6th July 1928

30

To

9-7 13-25-13

The Secretary to the Hon'ble
the Resident in Mysore, Bangalore.

Sir,

I am directed to advert to correspondence ending with your letter No.2868/148-1925, dated 20th March 1928, relating to the levy of Mysore Incometax on the income of employees of the Madras and Southern Mahratta Railway Company residing on railway lands in Mysore territory and on the profits of the said Company derived from the lines within the State worked by them. The Government of Mysore consider that the views communicated in your letter No.10523/148-1925 dated 17th October 1927, do not represent the correct position in regard to the object or extent of the cession of jurisdiction in question, and this communication is, therefore, addressed to explain the case once again and ask for its reconsideration.

2. The view of the Government of India in regard to the cession of jurisdiction over railway lands in the State is thus expressed in the letter referred to above:-

> "The Government of Mysore have ceded full jurisdiction over the railway lands in question. They retain no fiscal rights in regard to the lands concerned. ** "

M M J.

12.6

"The Government of India have no doubt, that the recovery of Mysore income-tax from these lands is entirely illegal.

"It is for them (the Government of India) to decide on the extent to which legislation should be applied thereto.

3. The cession of jurisdiction was admittedly for purely railway purposes, and it is only right that its object and extent should be strictly limited to the fulfilment of those purposes. Any action which has the effect of widening the scope of the cession would be both unnecessary and unfair. The Durbar contend that all rights over the lands in question, excepting only those rights which affect the use of the lands for purely railway purposes, vest in them. The Government of India have not hitherto advanced any claim to fiscal rights over those lands; on the contrary, they have expressly disavowed any intention of raising for their own benefit any revenue from them:- vide Residency D.O. letter No. 139 dated 26th October 1909. Any claim to fiscal rights in respect of these lands, as is now advanced, is altogether a new policy for which there seems no justification.

4. His Highness's Government believe that the policy of the Government of India in this matter is as stated in the following summary by the Standing Committee of the Chamber of Princes: (20th August 1924).

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"In the case of railway lines over which full civil and criminal jurisdiction has been ceded, the policy of the Government of India has been to apply to those lands only such laws as are necessary for the administration of civil and criminal justice, together with the Railway, Post Office and Telegraph Acts. There are cases in which it has been found convenient to apply to such lands the laws of an adjoining British district en bloc but all such laws are not enforced in those lands and fiscal laws particularly are not enforced, as it is not the policy of the Government of India to raise revenue from lands which are ceded for railway purposes. An Act such as the Excise Act is, however, applied to such lands when it is required to control the consumption of, and traffic in, liquor on railway stations, or to protect the excise revenue of British India. A law such as an Intoxicating Drugs Law may also be enacted for such lands when experience has shown that it is necessary to prevent smuggling through the railways, as much in the interests of the States themselves as of Government. Such a measure, though fiscal, is not revenue producing, and the Government of India make no profit out of it".

5. *The cession of jurisdiction did not include the surrender of fiscal rights, nor have such rights been claimed or exercised so*

1986

33

far. How, inspite of these facts, the Government of India now hold that they have the right to apply their own Income-tax Law to these lands or that the recovery of Mysore Income-tax from them is illegal, the Government of Mysore, are unable to understand.

6. The Law under which the income of the employees of the Madras and Southern Mahratta Railway Company residing on railway lands is assessed, is stated in your letter dated 20th March 1928 to be the Income-Tax Act No.XI of 1922. It is apparently the same Act under which the profits made by the Madras and Southern Mahratta Railway Company from the lines within the State are assessed, if taxed on the ground of their accrual on railway lands. But this Act does not apply to lands in Indian States ceded for railway purposes. The Government of Mysore are not aware of the authority under which the British Indian Income-tax Law is enforced in the case of these lands.

7. It is stated in your letter dated 17th October 1927 that "apart from the question of jurisdiction over the territory concerned, the profits of the Railway Company, since they are received in British India, are taxable under the British Indian Income-tax Act XI of 1922". This contention overlooks the fact that the profits which the Government of Mysore claim to tax are those accruing or arising in the State, though received in British India, and as such coming under the operation of the Mysore Income-tax Law. There is provision in this law introduced with the consent of the Government of

199

34

India under which relief from double tax is afforded to assessees whose profits are subject to the Income-tax Laws of both Governments: vide Section 10 of the Mysore Income-tax Regulation.

8. The Government of India state that it is for them to decide on the extent to which legislation should be applied to ceded railway lands. Apart from the question of the scope of jurisdiction, the Durbar would request the Government of India to take a larger view and to consider whether it would really be fair to apply their fiscal laws to ~~these~~ should not lands and appropriate the resulting revenues to their own benefit.

9. In the circumstances stated above, the ~~Government of Mysore~~ Durbar are unable to agree with the views of the Government of India, conveyed in your letter dated 17th October 1927, and they would request that in the light of the points urged in this letter, the Government of India may be pleased to reconsider their views. If, however, the Government of India are not disposed to modify them, it will be necessary to suggest the case being referred to arbitration under the procedure laid down in Foreign and Political Resolution dated 29th October 1920.

I have etc.,

Secy. to Govt.,
Finance Deptt.

W.G. 6/7/24

200

1589
9.8.27 35

D.O.C.241/25-26 OFFICE OF THE COMMISSIONER OF INCOME-TAX IN MYSORE.
No.

Bangalore 9th August 1928.

GENL. & REV. SECTT.
10 AUG 1928
FINANCIAL BRAN

9.8 13-25-Lby

D 675/H

Dear Sir,

In continuation of my D.O. letter No. C.241/25-26 dated the 7th ultimo, I write to say that the Deputy Commissioner of Incometax, Bangalore and Mysore Cities and Taluks, called upon the M. & S. M. Railway Company to submit its return of income for the year 1928-29. A notice was issued on the 2nd July and served on the 6th idem. In reply to this, the Chief Auditor & Accountant of the aforesaid Company has again returned the notice for the reasons stated in my letter No. C. 241/25-26 dated 1st December 1926, viz., that he has been instructed to cease to pay Incometax to the Mysore Government in respect of the profits on the Mysore State Lines etc.

2. As regards the employees working in the Company, the Assistant Commissioner of Incometax required the Company to send its annual return of employees for the two years ended 30th June 1927 and 30th June 1928. To this, the Chief Auditor and Accountant of the Company has forwarded a Nil Return meaning

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meaning thereby that the income of the employees on the railway lines is not liable to Mysore Incometax. As already stated in my letter dated 7th/9th July 1928, the only course left to the Department is to request the Deputy Commissioners of Incometax, within whose jurisdiction those employees are working, to issue notices calling for the returns of income for the two years ending with June 1928. Necessary action in this respect will be taken if Government approve of this course. I would also request orders on the last para of my previous letter.

3. Copies of the Special Deputy Commissioner's letter and of its enclosure in the matter are herein enclosed.

Yours sincerely,

J D Rajagopal

B. Srinivasa Iyengar, Esq., B.A., B.L.,
Secretary to the Government
of His Highness the Maharaja of Mysore,
Financial Department,
Bangalore.

Letter No. A.C.4/28-29 dated 25th July 1928 from the Deputy Commissioner of Incometax, Bangalore & Mysore - Cities and Taluks, to the Commissioner of Incometax in Mysore, Bangalore.

=====

Subject:--Issue of notices to the Madras & Southern Mahratta Railway Company, Ltd., and its employees.

In continuation of the correspondence ending with my letter No. A.C. 4/28-29 dated 4th July 1928 on the above subject, I have the honour to state that notice in form No. 6 calling for a return of income of the Madras & - Southern Mahratta Railway Company Ltd., was issued to the company on 2nd July 1928 and served on 6th July 1928 by - registered post. The Chief Auditor & Accountant of the aforesaid company has again returned the notice with his No. B.5120 dated 7th July 1928, for the reasons alleged in his letter No. B.51227 dated 23rd November 1926 (copy of which was sent to you along with my letter No. A.C. 3/26-27 dated 26th November 1926).

As regards the issue of notice to the said company by the Assistant Commissioner of Incometax, requiring it to send the annual returns of its employees for the two years ended 30th June 1927 and 30th June 1928, the Chief Auditor & Accountant of the company has forwarded with his letter No. E.60287/111 dated 20th July 1928 (a copy of which is also enclosed) a "nil" return.

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Letter No. E.60287/111/P.1 dated 20th July 1928 from the Chief Auditor & Accountant, M. & S. M. Ry., Co., Ltd., Madras, to the Assistant Commissioner of Incometax, Bangalore and Mysore Cities and Taluks, Bangalore.

I have the honour to forward herewith a "Nil" return

for

38

for the years ended with 30th June 1927 and June 1928. As regards the return for the year ended with 30th June 1926, I would invite your attention to my No. 60320/11 of 20-7-26 to the Deputy Commissioner of Incometax in Mysore, Bangalore, with which it was submitted.

(Copy of letter No. 60320/II dated 23rd July 1926 from the Chief Auditor & Accountant, M. & S.M. Railway Co., Ltd., Madras, to the Deputy Commissioner of Incometax in Mysore, Bangalore.

—

Re. Incometax Annual Return for 1925-26.

I have the honour to forward herewith Incometax Annual Return for employees of this Railway working on M. & S. M. Lines passing through the Mysore State for the year 1925-26.

In this connection I may point out that as the salary paid to these employees is liable to British Incometax from 1st June 1926, particulars of salary drawn by, deductions made on account of Provident Fund and Incometax from these employees up to 31st May 1926 are only included in the Return.

Please acknowledge.

"Copies."

G Ruthappa

For Commissioner of Incometax.

Shift
Confidential

No. 7e 1598 of 15/8/1928 M- 13 25-15-39

Dear Sir,

With reference to the correspondence ending with your D.O.Letter No.C.241/25-26 dated 9th July 1928 in regard to the assessment of the profits of the M & S.M. Railway Company and of the income of its employees, I am desired to forward herewith a copy of letter No.Pol.18 dated 6th July 1928 sent to the Residency on the subject, for your information.

I am to say

The question is a constitutional one and as it is under discussion between us and the Government of India, all the provisions of the Law in force need not be put in force.

Neither the company nor its employees really escape taxation; the Government of India has been taxing them. If the question is decided in our favour, the Government of India will have to be asked to refund to us the tax they are levying.

All that is required in the case at present whether in respect of the Railway Company or of its employees is simply to issue annual notices to the former in the usual course and ~~if~~ when the company returns them without taking any action, there the matter may stand. ~~The Mysore Government have in~~ their communications pointed out that the order issued by the Government of India directing the Railway Company and its employees not to pay taxes to us is not correct and have asked for its modification or the reference of the case to arbitration. They therefore, consider that the taking of the coercive processes of the law is likely to be misunderstood and will not also be in harmony with the alternative courses proposed.

Yours sincerely,

S.P.Rajagopalachari, Esq., B.A., B.I.,
Commissioner of Income Tax in Mysore.

This refers to your D.O. of 9th August 1928 also.

40

D.O. No. Pol 526

Rc1 Pol No. 525
21/30/28

17th Novr. 1928.

Dear Mr. Lothian,

I am desired to invite kind reference to Mr. Srinivasa Iyengar's letter No. Pol.18 dated the 6th July 1928 on the question of collecting income-tax on the profits of the M. & S. M. Railway Company and from the Company's employees in the Mysore Territory. The Dewan discussed this matter with the Hon'ble Mr. Crump before the latter's departure from Bangalore and it was agreed that a representation should be sent on somewhat different lines. I am accordingly to forward herewith letter No. Pol. 525 dated 17th November 1928, which may be kindly substituted for Mr. Srinivasa Iyengar's letter referred to above.

Yours sincerely,

W M.

A. C. Lothian, Esqr., I.C.S.,
Secretary to the Hon'ble the Resident
in Mysore, Bangalore.

209

41

Pol No. 525
D T. 13-25-16

17th November 1928

From N. Madhava Rao, Esq, B.A.B.L.,
Chief Secy. to the Govt. of H.H.
the Maharaja of Mysore,

To

A. C. Lothian Esq., I.C.S.,
Secretary to the Hon'ble the Resident in Mysore.

I am directed to advert to correspondence ending with your letter No.2818/148-1925, dated the 20th March 1928, relating to the levy of the Mysore income-tax on the income of employees of the Madras and Southern Mahratta Railway Company residing on railway lands in Mysore territory, and on the profits of that Company derived from the lines within the State worked by it. The Government of Mysore desire to make a further representation in the matter for the kind consideration of the Government of India, and this communication is accordingly addressed to you.

2. The Mysore Government feel that the nature and extent of jurisdiction over the railway lands should be interpreted with reference to its real object, and in this view it seems to them only reasonable to hold that it is limited to the fulfilment of purely railway purposes. Further, the Government of India themselves have been pleased to declare that they have no intention of raising any revenue from these lands : vide Residency D. O. letter No.139 dated 26th October 1909. I am also to refer for a more exact statement of the policy of the Government of India, to the summary of the Standing Committee of the Chamber of Princes on the subject dated the 20th August 1924

P.T.O.

42

in which it is said "fiscal laws particularly are not in force, as it is not the policy of the Government of India to raise revenue from lands which are conceded for railway purposes". While this seems to be their policy, what is actually happening is that they are making a revenue of Rs.15,000 or so a year from this source, and depriving the Durbar of it.

3. Cession of jurisdiction does not necessarily mean that the Durbar should be debarred from claiming a share in the revenues of the territory ceded or assigned to the Government of India for any particular purpose. I am to cite the instance of the Bangalore Assigned Tract, where although full jurisdiction has been explicitly transferred to the Government of India, the State gets three-fourths of the surplus revenue accruing in the tract. The Durbar feel that they have even a stronger claim in the case of the lands in question, which were only ceded for a limited purpose.

4. The profits of the Railway Company are, no doubt, received in British India and are, as stated in your letter, taxable under the British Indian Income-Tax Act XI of 1922, but they accrue or arise in the State. The assessee Company need not, however, pay taxes on its profits twice over as there is provision in the Mysore Income-Tax Law, introduced with the consent of the Government of India, under which relief from double tax is afforded.

5. Apart from the question of jurisdiction, the Durbar would earnestly request the Government of India to take an equitable and generous view of the matter.

6. In these circumstances, the Durbar trust that the Government of India will be pleased to reconsider the matter and I am to request that the Hon'ble the Resident may kindly be moved to extend his strong support to the representation made in this matter.

I have the honor to be,

Sir,

Your most obedient servant,

A. V. [illegible]

CHIEF SECRETARY TO GOVERNMENT.

B.K.M.

43

No 1139. 17
F.T 13-25-B

Lake View,
Mysore, 5th October 192x

I must apologise for troubling you with this letter, but my excuse is that the subject on which I am writing to you is of such great importance to the State that it is necessary that I should invoke your personal and sympathetic attention to it.

The subject I refer to is the claim of the Mysore State to the income-tax on the earnings of the Railway Companies in the State. I had a talk to Mr. Burdon on the subject when I was in Simla in August last, and I requested him to explain our point of view to you, when the opportunity came. I refrained from troubling you then, as I knew you were very busy with the Public Accounts Committee.

May I venture to hope that our representation will receive your sympathetic consideration? It has since been considerably re-inforced by the recommendation of the Butler Committee, who have stated that the claim of the States to levy income-tax on such earnings is a just one.

With kindest regards to Lady Schuster and yourself,

M

P.M.

14 The Hon'ble Sir George Ernest Schuster. K.C.M.G. C.B.
M.A
Finance Member of Council
Simla

DEWAN'S OFFICE
3 OCT. 1929
No. 864

FINANCIAL MEMBER OF COUNCIL

9. T13-25-18

1723/71
24.10.29
44

SIMLA,

October 16th, 1929.

Dear Dewan Sahib,

I have to acknowledge with thanks your letter of the 5th. I will take up the matter to which you refer as soon as possible after my return to Delhi. Our office is at present in the process of movement and it is difficult to get the necessary papers.

Yours sincerely,

C. [illegible]

Amin-ul-Mulk Mirza M. Ismail, B.A., C.I.E., O.B.E.,
Dewan of Mysore State,
Lake View, Mysore.

Y. Secy,

215 23-10-29

For [illegible]

1st [illegible] 24/10

FINANCE
24 OCT.
4909

24/10/29

24468 24/10

W. [illegible]

All communications should be addressed to the Secretary to the Resident in Mysore Bangalore, by designation and not by name.

D-1917/H

No. 9238 Enc.
335/1928.

1 NOV

45

GT 13-25-19

FROM

Major G. Loch,

SECRETARY TO THE RESIDENT IN MYSORE,

To

The Chief Secretary to the Government of

His Highness the Maharaja of Mysore.

Dated Bangalore, 31st October ~~November~~ *1929*:

R3 1/11/29.

GEN. & REV. SECTT. 8R H. 1. NOV. 1929 G. D. SECTION.

Subject.

Mysore income-tax levied on the profits of the Broad Gauge line of the Madras and Southern Mahratta Railway in the Mysore State and from the employees of the Railway Company residing in railway lands in the State.

SIR,

With reference to the correspondence ending with your letter No.Pol.525, dated the 17th November, 1928, on the above subject, I am directed to say that since the Butler Committee in their Report have mentioned, in paragraph 93, receipts from income-tax along with receipts from customs, excise and other sources, the Government of India, while not admitting that income-tax is on the same footing as the other sources of income mentioned by the Committee, have come to the conclusion that until the whole case regarding railways is considered, as affecting not only Mysore but all other States who may be concerned, the present position must be maintained.

Pol. 610 For favour of Dewan

1/11/29

(Seen by Dewan.) R3 1/11

5/11/29

R3 5/11/29

For Secy with compts

Very sorry

9/11 5.16

2. I am accordingly to request that the Government of Mysore will be so good as to credit to the Government of India as early as possible, the sums of Rs.24,693/- and Rs.5,934/13/- referred to in Major Evans-Gordon's letters Nos.10523 and 35 dated the 17th October, 1927 and 3rd January, 1928, respectively.

I have the honour to be,
Sir,
Your most obedient servant,

G. Loch

Major,
SECRETARY TO THE RESIDENT.

C. O. 42. Gl.

OFFICE OF THE COMPTROLLER TO THE GOVERNMENT
OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

No. B.646. *Bangalore, dated* 22nd November 1929.

FROM

S. SHAMANNA, ESQ., B.A.,
Comptroller to the Government of
His Highness the Maharaja of Mysore,
Bangalore.

To

The Chief Secretary to the Government of Mysore,
Bangalore.

Sir,

Levy of Incometax on the Profits of the Broad Gauge Line of the M & S.M.Railway in Mysore State and from the employees of the Railway Company residing in Railway lands in the State.

I have the honour to forward herewith a copy of letter No.PB.8/18/[illegible]75 dated 8-11-29 received from the Pay and Account Officer, Bangalore enquiring when he may expect credit for the amounts of Rs.24,693/- and Rs.5,934-13-0 referred to by the Secretary to the Resident in Mysore in his letter No.9238/335/1928 dated 31-10-29 addressed to you on the above subject. I have replied to say that the orders of Government in the matter are awaited.

I have the honor to be,
Sir,
Your most obedient servant,

Deputy Comptroller.

Letter No.P.B.8/18/2575 dated 8th November 29 from the Pay and Account Officer, Bangalore to the Comptroller of Mysore, Bangalore.

Subject.- Levy of income-tax on the profits of the Broad Gauge line of M.S.M.Railway in Mysore State and from the employees of the Railway Company residing in Railway lands in the State.

I have the honour to invite a reference to letter No.9238/335-1928 datedd the 31st October 29 from the Secretary to the Resident to the Chief Secretary to the Government of Mysore (copy enclosed herewith) and to enquire when the credit for the amounts may be expected.

==========

Copy of letter No.9238/335/1928 datedd the 31st October 29 from the Secretary to the Resident in Mysore, Bangalore, to the Chief Secretary to the Govt. of His Highness the Maharaja of Mysore.

Mysore income-tax levied on the profits of the Broad Gauge line of the Madras and Southern Mahratta Railway in the Mysore State and from the employees of the Railway Company residing in railway lands in the State.

With reference to the correspondence ending with your letter No. Pol.525 dated the 17th Novr.1928 on the above subject, I am directed to say that since the Butler Committee in their Report have mentioned, in paragraph 93, receipts from income-tax along with receipts from customs, excise and other sources, the Government of India, while not admitting that income-tax is on the same footing as the other sources of income mentioned by the Committee, have come to the conclusion that until the whole case regarding railways is considered as affecting not only Mysore but all other States who may be concerned, the present position must be maintained.

2. I am accordingly to request that the Govt. of Mysore will be so good as to credit to the Govt. of India as early as possible, the sums of Rs.24,693/- & Rs.5,934-13-0 referred to in Major Evans Gordon letters Nos.10523 & 35 dated the 17th October 27 and 3rd January 28 respectively.

"Copies"

M. Krishnamoorthy
Superintendent,
TAD.B.Section,
Comptroller's Office.

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24/11/28

All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

R. & T. D. SECTION. 14 DEC. 1929

No. 11629 ENCLOS. *Dated Bangalore, 13 Decr. 1929.*

FROM

Major G. Loch,
SECRETARY TO THE RESIDENT IN MYSORE.

To

The Chief Secretary to the Government of
His Highness the Maharaja of Mysore.

Subject :- Mysore income-tax levied on the profits of the Broad Gauge line of the Madras and Southern Mahratta Railway in the Mysore State and from the employees of the Railway Company residing in Railway lands in the State.

SIR,

I am directed to refer to the second paragraph of my letter No.9238, dated the 31st - - October, 1929, and to enquire how the question of crediting to the Government of India the sums of Rs.24,693/- and Rs.5,934/13/- stands.

I have the honour to be,
Sir,
Your most obedient servant,

for SECRETARY TO THE RESIDENT.

ASB

E. FT 13-25-21 No. Fol. 757 8/10/1

409

To

The Secretary to the Hon'ble the Resi
in Mysore, B a n g a l o

Sir,

Subject:- Mysore Incometax levied on th
profits of the Madras and Southern Mahratt
Railway in the Mysore State and from the
employees of the Company residing in Railw
lands in the State.

With reference to correspondence end
with your letter No. 11629 dated 13th Dece
1929, I am directed to state that Governme
propose to make another representation on
subject.

I have etc.,

7.1.30

Secretary to Government
Finance Department.

Mus. M.IV K^
8.1.30

H us-47/dw.10 1/30

Copy with compliments to the Comptro
to Government for information with referen
to his letter No. B.646 dated 22nd Novembe
1929.

Secretary to Government
Finance Department.

2.2.30

EB 511(2)
9.1

[redacted]ions should be
[redacted]e Secretary to the
Resident [redacted] Mysore Bangalore,
by designation and not by name.

No. 2433 Enc.
335/1928.

DEWAN'S OFFICE,
22 MAR. 1930
No. L6056

Ref. 1358

FROM

Major G. Loch,

SECRETARY TO THE RESIDENT IN MYSORE,

To

The Financial Secretary to the Government of
His Highness the Maharaja of Mysore.

Dated Bangalore, 22nd March, 1930.

Subject.

[redacted] income-tax levied on the profits of the broad gauge line of the [redacted] Railway in the Mysore State from the employees of the Railway [redacted] in railway lands in the State.

GENL. & REV. SECTT.
22 MAR 1930
FINANCIAL BRANCH.
409/R

SIR,

With reference to the correspondence ending with your letter No.Pol.757, dated the 8th March, 1930, on the above subject, I am directed to say that further representation has been made, that [redacted] will kindly arrange, without further delay, for the refund of the sums of Rs.84,393/- [redacted], Rs.2,187/- referred to in Major Evans-Gordon's letter No.[redacted], dated the 17th October, 1927, and No.35, dated [redacted] 1928.

I have the honour to be,
Sir,
Your most obedient servant,

G. Loch

Secretary to the Resident.

Draft submitted as per instructions.

Dewan

22.3.30

B.

ASD
22/3.

22/3/30

R/

D.C.1

57

Draft. Dol. 1044 & 24/3/30.

To

Major G. Loch,

Secretary to the Resident in Mysore,

Bangalore.

Subject:- Mysore Income Tax levied on the profits of the Railway Lines worked by the M. & S. M. Railway Company and on the income of the employees of the Company residing in Railway Lands, in the State.

Sir,

With reference to your letter No. 2435/335-1928 dated 22nd March 1930 on the above subject, I am directed to state that the Dewan during his recent visit to Delhi has made a personal representation to the Government of India and that an official communication will be ~~made~~ addressed to you as early as possible.

I have the honour to be,

Sir,

Your most obedient servant,

22.3.30

Financial Secretary.

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No. Pol. 1043 & 24 3/30.

To I.T. 13-25-23

The Secretary to the

Hon'ble the Resident in Mysore,

Bangalore.



Subject -

Income-tax levied on the profits of the Madras and Southern Mahratta Railway Lines in the Mysore State and that recovered from employees of the Company residing in Railway Lands in the State.

Sir,

In continuation of Mr. Sreenivasa Iyengar's Pol.No.757 dated 10th January 1930, I am directed to forward for submission to the Government of India, with the Hon'ble the Resident's support, the Durbar's further representation on the above subject.

2. It is stated in your letter No.9238 of the 31st October 1929 that "since the Butler Committee in their report have mentioned in para 93, receipts from income-tax along with the receipts from customs, excise and other sources, the Government of India have come to the conclusion that until the whole case regarding Railways is considered as affecting not only Mysore but all other States who may be concerned, the present position must be maintained."

3. While the Government of Mysore note

with satisfaction that the Butler Committee have recognised the justice of the general claim for the transfer to the Indian States of the net revenue realised in Railway areas within the States, I am to invite reference to the correspondence that has already passed between the Mysore Government and the Residency on the subject of this letter.

Prior to 1920 there was no income-tax levied in Mysore and no question of assessing the income earned in Railway lands arose for discussion till then. On the introduction of the Mysore Income-Tax Regulation, the Commissioner of Income-Tax in Mysore, addressed the Agent of the M. &. S. M. Railway Company in the matter of payment of income-tax on the profits earned by the Railway Company from the Mysore State Lines and the Bangalore-Bisanatham section of the Madras Railway which lies within the Mysore Territory. The Agent agreed to the payment of income-tax on the profits earned by the Company from the Mysore State Lines worked by it. But in regard to the Bangalore-Bisanatham Section of the Broad Gauge Line of Madras, which is not a State Line, he observed that no separate accounts were maintained. And relying on para 2 of the Railway Board's letter No.1792/Ry.dated the 9th June 1913 he contended that the Company was not liable to pay any income-tax of the Mysore Government in the absence of orders from the Government of India.

In the Durbar's Pol.No.210, dated the 10th September 1925, a communication was then

addressed to you, for a refund by the Government of India of the Mysore share of the tax levied on the profits of the Company in respect of Broad Gauge Line also from the year 1920-21. An enquiry was then made in your letter No.Pol.7695 of 29th September 1925 as to why the claim was not put forward earlier than 1925-26 and whether there were any special circumstances in justification of the delay that had occurred. The position was explained in the Durbar's letter No.Pol. 279 dated 13th October 1925.

4. In the meantime payment was being made by the Company of income-tax on the profits earned on the Mysore State Line and also on the income of employees of the Railway residing on Railway Lines within the State.

5. Your letter No.Pol.5087 of 11th June 1926 conveyed the opinion of the Government of India that the Mysore Government was precluded from enforcing the Mysore Income-Tax Regulation over lands in Mysore Territory occupied by the Company as the Durbar had ceded full and exclusive jurisdiction of every kind over such area and that the Agent was in error in making the payment of Mysore tax levied on the profits of the State Lines worked by the Company for the 4 years from 1921-22 to 1924-25.

6. It was pointed out by this Government in reply that as the cession of jurisdiction was only for purposes connected with Railways, all rights over the ceded lands except those relating to their use for purely railway

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purposes vest in the Government of His Highness. The Government of India have expressly disavowed any intention of securing the concession of jurisdiction for purposes of revenue. (Vide Residency D.O. letter No.139 dated 25th October 1909). In that letter, it is stated that "it is not the policy of the Government of India to exercise the fiscal rights which may be conveyed to them by a cession of full jurisdiction further than to protect British revenue for themselves in the lands to which the cession relates". The Government of India have ratified these declarations by their acts in relation to Sandal Wood and Liquor Licenses and they have also recognised the claim of the State to the surplus revenues of the Assigned Tract of Bangalore.

7. The Government of India maintain (Vide Pol.No.10523 dated 17th October 1927) that the concessions allowed in the matter of Sandal Wood and Liquor Licenses in the Railway Lines have been granted not as a matter of right but as "a matter of grace". The Durbar would be satisfied if a similar consideration be extended to them in regard to this matter also, especially in view of the reciprocity arrangement existing between the Government of India and the Government of Mysore in respect of the appropriation of

Income-Tax between them on the principle of accrual.

8. According to the Government of India Notification of February 6, 1896 relating to lands over which jurisdiction has been ceded "all laws for the time being in force in the Civil and Military Station of Bangalore shall be deemed to be in force in the aforesaid lands". If in virtue of this notification it be held that the Income-Tax Law in force in the Civil and Military Station has application in such area, the tax levied on income arising in it should be no more exempt from payment to the State than are the revenues of that tract,

9. Having regard to all these considerations, the Durbar venture to urge that the appropriation by the Government of India of the Income and Super taxes levied in respect of income and profits made on the Railway Lines within the State is not justifiable or consistent either with their declared policy, as stated above, or with the nature or scope of the jurisdiction ceded to them.

10. While the Mysore Government would be obliged if the general question raised in the Butler Committee's report is taken up for consideration as early as possible, they apprehend that its disposal will

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naturally take some time, and accordingly suggest that the Government of India might favourably view the Durbar's request in respect of the particular matter now under discussion, as a provisional arrangement subject to such further alterations as may be considered necessary after the Butler Committee's Report is finally dealt with.

11. In conclusion, the Durbar wish to emphasise the fact that there is ample justification for such special treatment, as the case of Railway lands in the Mysore State is unique. So far as the Durbar are aware, there is no other block of Railway land so self-contained within a single Indian State as the Railway lands in the Mysore State, and the special treatment of the latter will not, in the opinion of the Durbar, be embarassing to the Government of India vis-a-vis the other Indian States.

I have etc.,

Chief Secretary to Government,

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GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

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No. Pol 1107 PP (2 Genl)

Dated, Bangalore, 12. 4. 32

9.T. 13-25-24

From

N. MADHAVA RAO, Esq., B. A., B. L.,
Chief Secretary to the Government of His Highness the Maharaja of Mysore.

To

The Secretary to the Hon'ble the Resident in Mysore,
Bangalore.

Sir,

SUBJECT:- Income-tax levied on the profits of the Madras and Southern Mahratta Railway lines in the Mysore State and that recovered from employees of the Company residing in Railway lands in the State.

* * * * * * *

I am desired to invite kind reference to my letter No.Pol.1043, dated 24th March 1930, on the above subject, and to state that the Government of Mysore will esteem it a favour if early orders of the Government of India are obtained on the representations made in that letter.

The position of the Durbar may briefly be re-stated as follows:-

The Government of India secured jurisdiction over the railway lands in the State for purely administrative purposes, and have expressly disavowed on several occasions, (vide Appendix I, any intention of using such jurisdiction for the purpose of raising revenue. These declarations have been ratified by the action of the Government of India in conceding to the Durbar rights in respect of sandalwood revenue and liquor license fees. Yet, in the case of Income-tax, they have taken an attitude which is at variance with their declared policy, and which results in the railway jurisdiction being used to enhance their revenue at the expense of the State.

I am to enclose for ready reference (vide Appendix II) a resume' of the reasons which have been assigned by, or which have possibly weighed with, the Government of India, in coming to the view they have taken of the matter, together with the Durbar's -

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comments thereon. It will be seen that these reasons do not touch the real issue, viz., whether it is equitable, and consistent with the declared intentions of the Government of India, to deny to the Mysore Durbar its share of income-tax accruing on the railway lands in question.

The final disposal of the matter has, perhaps, been deferred pending the settlement of several other questions of railway policy in relation to the States. The Durbar venture to urge that their representation may, and can conveniently, be dealt with on its own merits, as it involves no new question of policy and only calls for the application of an admitted principle. It may, also, be observed that no practical difficulty was felt in regard to the assessment of the tax, which was actually paid to the State for four years. Whatever difficulties may or may not exist with regard to other States, Mysore's claim is both unequivocal and easy of adjustment.

The Durbar would be very grateful for an early settlement of this question.

I have the honor to be,

Sir,

Your most obedient servant,

(Sd) N Madhava Rao.

CHIEF SECRETARY TO GOVERNMENT.

C/o to Financial Secretary

Appendix -I.

Extracts from previous correspondence regarding the scope of cession of Railway Jurisdiction in Mysore.

I. Extract from letter from the Government of India, Foreign Department, to the Secretary of State for India No.26, Political, Fort William, the 3rd March 1880.

x x x

15. x x x In regard to railways and telegraphs in Mysore, we have reserved power to retain the working of them in our own hands, and to assume jurisdiction over railway lands as has been done in almost all the other States of India. .....

And although the Maharaja will bind himself to make over free of cost any land required for a British Railway, the transfer of plenary jurisdiction in such land is a point for future examination upon grounds of administrative convenience.

x x x

III. Extract of D.O.Camp No.139, dated the 26th October 1909, (Camp Mysore) from the Hon'ble the British Resident in Mysore, to the Dewan of Mysore.

x x x

5. Even on the view of the scope of the term "full jurisdiction" which I maintain, it is not the -- policy of the Government of India, as I understand it, to exercise the fiscal rights which may be conveyed to them by a cession of full jurisdiction further than to protect British Revenue, and they have no desire to raise revenue for themselves in the lands to which the cession relates.

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This being so, I am prepared to propose to the Durbar that arrangements should be made by the Civil and Military Station authorities under which the State Officials will be allowed reasonable facilities to --

to supervise the Sandal trees growing along the lines of Railway over which jurisdiction has been ceded, and to remove at their discretion, subject only to the proviso that no inconvenience or trouble is caused to the Railway Company and that trees which the latter consider likely to interfere with the working of the Railways are promtly removed as at present.

x x x

12. There is no intention, however, on my part, to suggest any interference with the Durbar's enjoyment of the Excise revenue derived from the existing Railway Refreshment Rooms, marginally noted, because, for the reasons explained above, such a concession is not inconsistent with my view of the meaning of "full jurisdiction" .....

Bangalore City.
Tumkur.
Arsikere.
Kadur.
Harihar.

x x x

Copy of letter No.8032, dated the 21st December 1909, from the First Assistant to the Resident in Mysore, Bangalore, to the Dewan of Mysore.

I am directed to refer to the correspondence ending with Mr. Chandrasekhara Iyer's letter No.300/Pol. dated, the 30th October 1908, on the subject of the measures necessary for the protection of sandal trees growing on lands assigned for Railway purposes within the limits of the Mysore State.

2. While the Resident is not prepared to admit the claim of the Durbar to the control over the sandal trees growing along the lines of Railway over which jurisidtion has been ceded to the British Government as of right, he has no objection to the State officials supervising the preservation of the said sandal trees and to their removing them at their discretion, subject

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subject to the condition that no inconvenience or trouble is caused to the Railway Company and that the trees which the latter consider likely to interfere with the working of the Railways are promtly removed as at present. The position has been explained to the Agent, Madras and -- Southern Mahratta Railway and instructions have accordingly been issued to the Collector of the Civil and Military Station of Bangalore to afford to Mysore officers all reasonable facilities for the purpose.

x x x

Extract from the summary of the Standing Committee of the Chamber of Princes 1924.

"In the case of railway lines over which full civil and criminal ~~jurisdiction~~ jurisdiction has been ceded, the policy of the Government of India has been to apply to those lands only such laws as are necessary for the administration of civil and criminal justice, together with the Railway, Post Office and Telegraph Acts. There are cases in which, it has been found convenient to apply to such lands the laws of an adjoining British District en bloc but all such laws are not enforced in those lands and fiscal laws particularly are not enforced, as it is not the policy of the Government of India to raise revenue from lands which are ceded for railway purposes. An Act such as the Excise Act is, however, applied to such lands when it is required to control the consumption of, and traffic in, liquor on railway stations, or to protect the excise revenue of British India. A law such as an Intoxicating Drugs law may also be enacted for such lands when experience has shown that it is necessary to prevent smuggling through the railways, as much in the interests of the States themselves as of Government. Such a measure, though fiscal, is not revenue producing, and the Government of India make no profit

subject to the condition that no inconvenience or trouble is caused to the Railway Company and that the trees which the latter consider likely to interfere with the working of the Railways are promtly removed as at present. The position has been explained to the Agent, Madras and Southern Mahratta Railway and instructions have accordingly been issued to the Collector of the Civil and Military Station of Bangalore to afford to Mysore officers all reasonable facilities for the purpose.

x x x

Extract from the summary of the Standing Committee of the Chamber of Princes 1924.

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Appendix II.

Objections taken by the Government of India to admit the claim for levy of Mysore Income Tax in Railway lands and the Durbar's comments thereon.

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Objections raised by the Government of India.	Replies.
1. The general question of the effect of the cession of jurisdiction over Railway lands by a State to the Government of India is involved in the case, and the grant of a concession to Mysore to levy income tax on the lines passing through their territory would be embarrassing from this point of view.	The Durbar's contention has always been that the cession of jurisdiction was only for purely Railway purposes. No other view of the cession is reasonable. All rights over the ceded lands except those relating to the use of the lands for railway purposes vest in the Mysore Government. The Government of India have expressly disavowed any intention of securing the cession of jurisdiction for purposes of revenue. Vide. Residency letter No. D.O. 139, dated 25th October 1909. In that letter it is stated that "it is not the policy of the Government of India to exercise the fiscal rights which may be conveyed to them by a cession of full jurisdiction further than to protect British Revenue and they have no desire to raise revenue for themselves in the lands to which the cession relates." The Government of India have ratified these declarations by their acceptance of the claim of the Durbar to Sandal wood and excise revenue on this Railway area.

Cession of jurisdiction does

necessarily mean that the Durbar should be debarred from claiming the revenues of the territory ceded or assigned to the Governme of India for any particular purpose. The instance of the Bangalore Assigned Tract may be cited where, although full jurisdiction has been explicitly transferred to the Government of India, the State gets three-fourths of the surplus Revenue accruing in the Tract. The claim for taxing income accruing in the Railway lands is even - - stronger.

The Agent of the Madras and Southern Mahratta Railway Company actually paid to the Mysore Government the income-tax due on the profits of the Mysore State Lines for four years from 1921-22 to 1924-25, and also the income-tax recovered from employees of the Railway residing on lands occupied by it for the years 1924-25 and 1925-26. Further payments have been stopped by the Company under the direction of the Government of India, who have also demanded the refund of the amounts previously paid.

The case of Railway lands in the Mysore State is unique. So far as the Durbar are aware, there is no other block of Railway land so self-contained within a single Indian State as the Railway lands in the Mysore State, and the special treatment of the latter will not, i n t h e - -

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the opinion of the Durbar, be embarrassing to the Government of India vis-a-vis the other Indian States.

2. From the Income Tax point of view the following points arise.

(1) If the Durbar should be allowed to tax the profits (and the salaries of the employees) because the Railway line is State Territory the M & S M Railway Company have to claim relief from Double Income-tax, to which it would naturally object.

The arguments in reply to these objections may be summarised as follows:

It is stated that the income in question are taxed under the British Indian Income-tax Act XI of 1922 on the ground that they are received in British India, but this view overlooks the fact that the profits the Government of Mysore claim to tax are those made in the State, which should therefore contribute to the revenue of the State.

In respect of income-tax matters there is a reciprocity arrangement between the Government of Mysore and the Government of India according to which the latter have agreed that in case of business whose headquarters are in British India but which have branches in Mysore, a deduction shall be made from the Indian Income-tax payable on the profits of such businesses of the amount of Mysore Income Tax that will be payable on the profits made in Mysore. The extension of the reciporcity arrangement to this case is claimed. If the Government of an Indian State carrying on a business or trade in British India is subject to tax, it is difficult to understand why a Company carrying on the business of railway transport in an Indian State should not be made liable to the taxation of that State. There is no valid reason

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why the Company should object to such an arrangement. As already stated above, the Company actually paid the ~~xxxx~~ tax for some years. But it was only under instructions of the Government of India, communicated in the Railway Department, that the Agent ceased to pay income-tax to the Government of Mysore in respect of the profits of the Mysore State lines and also to recover income-tax from the employees of the Company on our behalf.

(2) The Company might also raise objections on legal grounds to being taxed by the Mysore Durbar.

The Company did not in the first instance raise any legal or other objection to pay income-tax on its share of the profits of the Mysore State lines. But for the directions of the Government of India referred to above, the Company would have continued to pay income-tax to the Government of Mysore as it did for some years. Indeed, it has been admitted by the Government of India themselves that the Railway Company would not suffer financially owing to the levy of income-tax by the Mysore Government on the Company's share of the profits of the Mysore State lines. The Company's objection has, therefore, no bearing on the decision of this case. The matter is entirely one for settlement between the Government of Mysore and the Government of India.

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(3) It is not possible to permit by an executive order the enforcement of the Mysore Income-tax law in the Railway lands.

The Government of India state that it is for them to decide on the extent to which legislation should be applied to ceded Railway lands. If, pending the settlement of the general question, there is any technical difficulty in applying the Mysore Income-tax Law to Railway lands in question there ought to be no objection to the transfer to the State of the proceeds of the tax levied under any other Law.

(4) To allow States generally to enforce their Income-tax laws on Railway lands passing through their territory in most cases would mean conceding the right to tax the earnings of sections of a continuous line and bring about administrative difficulties.

Admittedly, the Company's share of the profits of the Mysore State Lines is easily ascertainable and the Agent put forward administrative difficulties in ascertaining the profits only in respect of the Bangalore-Bisanatham Section of the Madras line, and even in this case, it would be possible to evolve a reasonable method for determining the profits earned on this section in Mysore Territory.

(5) The question can only be dealt with as part of a comprehensive settlement with Indian States generally.

Mysore stands on a peculiar footing, and as already pointed out, the grant of any special treatment to her will not embarrass the Government of India vis-a-vis other Indian States. In any case, that cannot constitute a just ground for refusing to give Mysore what it is so clearly entitled to.

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Confidential.

Levy of Income-tax on the Profits of the Broad Gauge system of the Madras and Southern Mahratta Railway Company within the Mysore Territory.

File No. 13 of 1925.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

PROCEEDINGS OF THE GENERAL AND REVENUE DEPARTMENTS.

"A" Collection. **INCOME TAX.** **Serial Nos. 1—24.**

Correspondence with the Residency in the matter of levy of income-tax on the profits of the Broad Gauge System of the Madras and Southern Mahratta Railway Company within the Mysore Territory.

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2	From the Secretary to the Hon'ble the Resident— Letter No. 7965, dated 29th September 1925. Enquires whether there are any special justification for the delay in preferring the claim to the refund of tax.		50
3	To the Secretary to the Hon'ble the Resident— Letter No. Pol. 279, dated 13th October 1925. Explains the cause for the delay in preferring the claim.		51
4	From the Commissioner of Income-tax — Letter No. C. 241, dated 24th November 1925. States that the Deputy Commissioner of Income-tax for Bangalore and Mysore has assessed the Madras and Southern Mahratta Railway Company for the Broad Gauge Section for 1924–25 and for the Meter Gauge Section and Broad Gauge Section for 1925–26.		51
5	From the Commissioner of Income-tax— Letter No. C. 241, dated 9th June 1926. Forwards copies of communications from the Chief Auditor, Madras and Southern Mahratta Railway and the Secretary, Railway Board, stating that no furtherr ecoveries in respect of Mysore Income-tax on salaries of Railway employees of the Company will be effected.		51
6	From the Secretary to the Hon'ble the Resident— Letter No. 5087, dated 11th June 1926. States that as the Mysore Government have ceded full and exclusive jurisdiction over the lands in Mysore occupied by the Madras and Southern Mahratta Railway, they are precluded from enforcing the Mysore Income-tax Regulation in such lands and requests that arrangements may be made to refund a sum of Rs. 24,693 wrongly adjusted in the past four years.		52
7	To the Secretary to the Hon'ble the Resident— Letter No. Pol. 555, dated 21st December 1926. Communicates the views of the Mysore Government in the matter and states that the Government will be much obliged if the Government of India will reconsider their views and modify the instructions issued to the Madras and Southern Mahratta Railway Company by the Railway Board.		53
8	From the Secretary to the Hon'ble the Resident— Letter No 10523-148-1925, dated 17th October 1927. Communicates the views of the Government of India and requests that the amount of Rs. 24,693 may be adjusted as already requested.		54

INCOME-TAX—*concld.*

Serial No.	Number and date of letter with contents	Reference	Page in "A" Proceedings
9	From the Secretary to the Hon'ble the Resident— Letter No. 35-148-1925, dated 3rd January 1928. States that besides the Mysore Income-tax wrongly levied on the Madras and Southern Mahratta Railway Company's share of the profits of Mysore State Lines, the Mysore Government have recovered Income-tax from employees of the Railway residing on lands occupied by the Railway and requests that the amounts thus recovered, *viz.*, Rs. 5934-13-0 may be credited to the Government of India.		55
10	To the Secretary to the Hon'ble the Resident— Letter No. Pol. 795, dated 10th January 1928. Requests information on certain points.		55
11	From the Secretary to the Hon'ble the Resident— Letter No. 2868, dated 20th March 1928. Furnishes answers.		56
12	To the Commissioner of Income-tax— Letter No. Fl. 9673, dated 30th June 1928. Requests him to enforce the Mysore Income-tax Regulation on the Railway Company and its employees in the usual course.		56
13	To the Secretary to the Hon'ble the Resident— Letter No. Pol. 18, dated 6th July 1928. States that the Durbar are unable to agree with the views of the Government of India and that if they are not disposed to modify them, the matter may be referred to arbitration.		57
14	From the Commissioner of Income-tax— D. O. No. C. 241, dated 9th August 1928. States that the Company has been called upon to submit its return of income.		58—59
15	To the Commissioner of Income-tax— Letter No. Fl. 1598, dated 15th August 1928. States that all the provisions of the law need not be put in force since the question is a constitutional one under discussion between the Mysore Government and the Government of India.		60
16	To the Secretary to the Hon'ble the Resident— Letter No. Pol. 525, dated 17th November 1928. Requests that the Government of India may be moved to reconsider their views in the matter.		60
17	To the Hon'ble Sir George Ernest Schuster— D. O. No. 1139, dated 5th October 1929. Invites reference to the representation made by the Government of Mysore in regard to the claim of the State to the income-tax on the earnings of the Railway Companies in the State.		61
18	From the Hon'ble Sir George Schuster— D. O., dated 16th October 1929. States that he would take up the matter after his return to Delhi.		61
19	From the Secretary to the Hon'ble the Resident— Letter No. 9238-335—1928. dated 31st October 1929. States that the Government of India have come to the conclusion that until the whole case regarding Railways is considered, as affecting not only Mysore but all other States, the present position must be maintained and requests that the sums credited to the Mysore Government may be refunded.		61
20	From the Comptroller— Letter No. B. 646, dated 22nd November 1929. Forwards copy of a letter received from the Pay and Account Officer, Bangalore enquiring when credit for the amount of income-tax collected from the Company may be expected.		62
21	To the Secretary to the Honble the Resident— Letter No. Pol. 757, dated 10th January 1930. States that Government propose to make another representation on the subject.		62
22	From the Secretary to the Hon'ble the Resident— Letter No. 2433-335—1928, dated 22nd March 1930. Requests payment of Rs. 21,623 and Rs. 5,934-13-0 as no representation has been made.		63
23	To the Secretary to the Hon'ble the Resident— Letter No. Pol. 1043, dated 24th March 1930. Urges the claims of the Mysore Government to income-tax on the profits of the Company and the income of its employees.		63—64
24	To the Secretary to the Hon'ble the Resident— Letter No. Pol. 1107—P. P., dated 12th April 1932. Requests that the Durbar's representation be dealt with on its own merits and adds that they would be highly grateful for an early settlement of the question.		65—69

1925.

GENERAL AND REVENUE SECRETARIAT.

(INCOME-TAX).

FILE NO. 13—25.

LEVY OF INCOME-TAX ON THE PROFITS OF THE BROAD GAUGE SYSTEM OF THE MADRAS AND SOUTHERN MAHRATTA RAILWAY COMPANY WITHIN THE MYSORE TERRITORY.

NOTES.

1. In the Income Tax Commissioner's letter of 18th December 1920, the Commissioner reported to Government that the Agent of the Madras and Southern Mahratta Railway Company repudiated the liability of the Company to pay Income Tax in the absence of the Special Orders of the Government of India as the Secretary of State for India in Council has full and exclusive jurisdiction of every kind on the broad-gauge line.

2. From the letter addressed to the Income Tax Commissioner by the Agent of the Company in the matter (*vide* letter No. 1151—20-3, dated the 14th December 1920), it is seen that the ground on which payment of Mysore Income Tax is sought to be evaded is that the lands lying within the Mysore State occupied by the Bangalore branch of the old Madras Railway was transferred to the Secretary of State for India in Council "with full jurisdiction of every kind over the lands lying within the State." There is reference in the Agent's letter to the Income Tax Commissioner to a letter of the Railway Board No. 1792 Ry. of 9th June 1913 in which the matter referred to is said to have been notified. This letter is not available in the file of papers received from the Income Tax Commissioner's Office. The Railway Secretariat has been requested to obtain by wire a copy of this letter and this will be put up as soon as it is received. Even without it the exact circumstances of the transfer of the lands referred to may be gathered from the available records.

3. When the Bangalore Branch of the Madras Railway was constructed, the lands required for it in the Mysore Territories were given to the Company free by the Mysore Administration in the days when it was carried on by the Chief Commissioner of Mysore. When the resumption of the administration by the Ruling Family of Mysore was under consideration, the Government of India thought it necessary in view of the forthcoming resumption, to arrange for the transfer of full jurisdiction on the lands in the State occupied by the Madras-Bangalore Railway line, short of Sovereignty rights, to the British Government, (*vide* page 2 of the printed papers relating to Railway jurisdiction and also pages 5 and 6). It was at the same time contemplated to include a clause in the Instrument of Transfer, which was then being drafted to give effect to the Rendition proposals, to secure this right to the British Government not only in respect of lands previously given over for Railway purposes but also in respect of lands to be given thereafter. Attention is invited to clause 15 of the Instrument of Transfer and clause 14 of the Mysore Treaty which has since superseded the Instrument of Transfer, in which the contemplated arrangements have been provided for.

4. The notification transferring the lands to the jurisdiction of the Government of India is printed on pages 5 and 6 of the printed collection of papers relating to jurisdiction placed in the file. The notification purports to transfer the lands occupied by the Madras Railway within the State with "full jurisdiction short of

sovereignty rights absolutely to the British Government." Reading this with the clause of the Instrument of Transfer and of the Treaty referred to above which should be taken as superseding the Old Notification of 5th July 1877, it will be seen that the jurisdiction reserved to the Government of India both in respect of lands previously transferred and those to be thereafter transferred was what is specified in the Treaty as "plenary jurisdiction." The word "plenary" means in ordinary language "full" "complete," "entire" or "absolute." In law the term is applied to an ordinary suit through all its gradations and formal steps and is opposed to what is known as "summary." The term seems therefore to have reference to causes in courts. That this is what was intended is clear from the Notification issued in 1896 (*vide* pages 54 and 55 of the printed collection) by the Government of India themselves in respect of lands occupied by the Mysore State Railways transferred later on to the working of the M. & S. M. Railway Company and the previous correspondence relating to it. These lands stand in clause 14 of the Treaty in the same category as those given previous to the Rendition (*vide* item (1) of the Railway lines enumerated in the preamble of the Notification referred to above.) The transfer of jurisdiction contemplated in this notification is categorically mentioned as applicable in respect only of the following :—

(1) Criminal Courts.
(2) Civil Courts.
(3) Police.

5. From this it follows that the "plenary" jurisdiction transferred in respect of the Bangalore-Bisanatham Section of the Bangalore-Madras Railway can also be only in respect of the above three items. In these circumstances, the only feasible interpretation to the Notification of 1877 is that jurisdiction over the lands on the Bangalore-Bisanatham Section of the Broad Gauge line transferred to the British Government is only in respect of Criminal and Civil Courts and of the Police administration and that the sovereignty rights of His Highness to enforce the fiscal laws over the tract covered by the Railway is not in any way affected. Such transfer of jurisdiction to the Government of India made purely on grounds of administrative convenience, as set forth throughout in the whole correspondence contained in the printed papers affords no justification to the Railway Company to claim exemption from the operation of the Revenue or Fiscal Laws of the State (of which the Income Tax Regulation is one). This has been recognised by the Company which pays tax on profits earned on State Railway lines worked by it. The jurisdiction on the lands covered by those lines has also been transferred in the same manner as over the Bangalore-Bisanatham line. It is strange therefore that the Agent has urged this as an excuse for not paying income-tax which is payable by the Company under Sections 4 and 10 (4) of the Mysore Income-tax Regulation.

6. In this connection it may be useful to compare the wording of the notification relating to the transfer of lands for Railway purposes with that in the Deed of Assignment of the Civil and Military Station of Bangalore. In this deed, His Highness has agreed to assign "free of charge to the exclusive management of the British Government" and also to renounce "the exercise of all jurisdiction in the lands so assigned."

7. There is no reference in the terms of the Treaty relating to the assignment of lands for railway purposes to any such "exclusive management" or to the "renouncement of the exercise of all jurisdiction in the lands" but the condition of assignment of railway lands is limited only to the transfer of plenary jurisdiction which is confined as pointed out above, only to jurisdiction in respect of Civil and Criminal Courts and in respect of Police jurisdiction. This difference in the terms of the documents relating to the cession of lands for Railway purposes and the assignment of the Civil and Military Station is significant and supports the view taken above.

8. It may in this connection be also noted that even in respect of the Civil and Military Station which has been assigned on such absolute conditions, the right to receive the surplus revenues of the Tract has been recognised and the surplus is also being paid to us. There can therefore be no doubt whatever as regards the liability to income tax of the income of the Railway Company from business carried on within the limits of the State.

9. In the Income Tax Commissioner's D. O. letter of August 1920 to the Chief Secretary it is stated that the Agent has agreed to send returns of pay drawn by the employees of the Railway Company residing within the limits of the territories of His Highness the Maharaja. It is understood that this arrangement is now in force and returns are also being sent. This fact also goes against the contention of the Company that it is not liable to income-tax in respect of its own income.

10. In view of all that is stated above, it seems necessary to request the Commissioner of Income Tax to proceed at once to assess the income of the Company on its income from the broad gauge lines within the State.

11. If it is not considered desirable to adopt this procedure at once, it is for consideration whether the Residency may be addressed in the first instance before proceeding to take any action for assessment of the Company's income.

M. A. R.
26-6-25.

REV. SECRETARY

12. The railway lands relating to the Bangalore-Bisanatham Section of the Broad Gauge Railway line to Madras were given to the Madras Railway Company in 1858 when the administration of the State was in the hands of the British Commission. In 1877 when the restoration of the State to the Mysore Ruling Family was under consideration, the Government of India took up for consideration the conditions on which these lands are to be held and also other lands which may be required by the British Government for railway purposes in Mysore. The Resolution of the Government of India on the subject dated 27th November 1877 is contained on page 5 of printed collection put up. It was provided that full jurisdiction in such railway lands short of sovereignty rights should be ceded absolutely to the British Government. The question is: what is meant by the term "full jurisdiction short of sovereignty right?" The Government of India Notification dated 5th February 1883—page 6 of the printed collection clearly explains this. What was contemplated was the assumption by the Government of India of jurisdiction in respect of Civil and Criminal Courts and also of the Police. The terms of the Resolution of the 27th November 1877 clearly show that fiscal jurisdiction was not ceded or acquired. If fiscal jurisdiction also was intended to be ceded there was no necessity for clause (III) of the Resolution which specifically lays down that no transit or other duties on through goods shall be levied by the Mysore State.

13. The provision in the Instrument of Transfer, and later on in the Treaty also supports the view expressed above. The phraseology used in the Instrument of Transfer is a little different. The term used is plenary jurisdiction and what is meant by plenary jurisdiction will be apparent from the Government of India Notification of 1896, printed on page 54 of the printed collection. Provision is made in the Notification for the exercise of civil and criminal jurisdiction and police powers. There is no reference again to fiscal jurisdiction.

14. From the foregoing facts it is apparent that fiscal jurisdiction over railway lands jurisdiction over which has been given to the Government of India still remains with the Government of Mysore.

15. It will be seen from the Notification of the 6th February 1896 that all railway lands, jurisdiction over which has been ceded to the Government of India are on the same footing: there is no distinction between lands relating to the State owned railways and lands relating to the lines owned by the M. & S. M. Railway Co. In regard to the income earned by the M. & S. M. Railway Co., as the lessees of the State Railway, income-tax is now paid. It therefore necessarily follows that the M. & S. M. Railway Co., has perforce to pay income-tax on that portion of their income which relates to the Bangalore-Bisanatham Section.

16. The M. & S. M. Railway Co., have tacitly admitted the rights of the Government of Mysore to levy income-tax on persons residing in railway lands of the Bangalore-Bisanatham Section. I consulted the Deputy Commissioner of Income-tax informally and from the statements furnished to him by the Auditor of the M. & S. M. Railway Co, which he showed me, it is found that the Auditor is

recovering income-tax from the employees of the Company resident in the Bangalore-Bisanatham line and remitting it to the Deputy Commissioner. It is obvious that the Income-tax Authorities of the Government of India have not attempted to make any collections from this line; for then the Auditor would not have sent the income-tax to the Deputy Commissioner of Income-tax. If private persons resident in the Railway lands on the Bangalore-Bisanatham Section are liable to pay income-tax to the Mysore Government, the M. & S. M. Railway Co., which is only a private company are bound to pay income-tax in respect of their income relating to this line.

17. In view of all these circumstances it appears to be quite justifiable to proceed to assess the Railway Co., to income-tax. If, however, it is considered necessary that the Residency should be addressed, a draft letter will be put up.

18. The view of the Local and Legislative Secretary is that the right of taxation remains with His Highness's Government. He has noted to the effect in the file relating to Railway surcharge.

K. V. A.
27-6-25.

Second Member.

19. It would appear to be best to address the Residency on the lines indicated in the Assistant and Local and Legislative Secretary's notes.

20. The Agent says that no separate accounts are kept for this portion of the line; but it would be easy to assess on the prorata basis, if the principle is accepted.

K. CHANDY,
28-6-25.

21. I have exhaustively dealt with the question relating to the internal Sovereign rights of His Highness the Maharaja over the Territory ceded to the Railway for civil and criminal jurisdiction only and shown that the internal rights of His Highness except making laws and administering justice (civil and criminal), are left intact over the territory occupied by Railway Co., and that the Government of His Highness are entitled to levy tax. This conclusion was reached after examining the question in detail from the point of jurisprudence and from the decision of Privy Council.

B. NAGAPPA,
29-6-25.

Dewan.

22. A draft letter should be put up to Residency to obtain authority from Government of India which the Railway Co., want, if such a course is desirable, otherwise we may assess and let the company object. But as political conditions are involved it is better to address the Residency.

A. R. B.
9-7-25.

Draft M. V. 9-7-25.

23. *Reference.*—Dewan's minutes of 9th July 1925. When the file was submitted to the Member and the Dewan a copy of the Railway Board's letter dated 9th June 1913 was not available. It has since been received from the Railway Secretary. A perusal of the Schedule attached to the notification referred to in the letter shows that it includes the State owned sections of the Meter gauge system. Apparently the Railway Agent has failed to notice this fact.

24. In view of this, it does not appear to be desirable for us to open the question of jurisdiction, its significance, etc. Perhaps it would be enough if a draft on the lines of that now put up is issued.

For orders.

K. V. A.
5-8-25.

Second Member.

25. I agree to the draft letter. It is seen also by Local and Legislative Secretary and after adding a sentence if he agrees, to the effect that the case is similar to the grant of surplus revenue—Government of India says it is 'grace' and we say it is 'right' and so whether such a sentence would add or subtract from the value of the letter is a matter also for Local and Legislative Secretary's opinion.

K. C.
6-8-25.

Local and Legislative Secretary with compliments.

26. I would suggest the following paragraph at the end of the draft to be added. From the correspondence leading up to the cession of jurisdiction and the nature of jurisdiction actually conceded by His Highness the Maharaja over the areas occupied by this and other Railways in the Mysore State, the position may well be maintained that the internal rights of sovereignty of His Highness the Maharaja except making laws and administering Justice (Civil and Criminal), over the area, are left intact and that this right extends to the levy of income-tax on the Railway Company. The grant of surplus revenue from the assigned Tract and other instances also clearly indicate the recognition of such a right.

B. N.
6-8-25.

27. I agree. Please submit draft with the addition to Dewan before issue (as modified by me).

K. C.
9-8-25.

28. The draft being an imprortant one may be submitted for His Highness approval. I want to know if Civil and Military Station surplus revenue need be referred to.

A. R. B.
12-8-25.

29. The most important point to be settled is whether the profits of the Broad Gauge line of the Madras and Southern Mahratta Co., are assessable to Mysore Income tax and after this is settled calculating the income and the rate of assessment will then arise for consideration later.

B. S.
21-8-25.

Submitted to His Highness.

30. I beg to submit for His Highness' gracious approval the draft letter to the Residency on the subject of levy of income-tax on the profits of the Broad Gauge line of the Madras and Southern Mahratta Railway Company lying within the limits of Mysore territory.

BANGALORE,
29th August 1925.

A. R. BANERJI.

Final Note by the Second Member of Council.

SUBJECT.—Levy of income-tax on the profits of the Broad Gauge line of the M. & S. M. Railway Company, lying within the limits of Mysore territory.

31. The accompanying papers relate to the levy of income-tax on the profits of the Broad Gauge line of the M. & S. M. Railway Company lying within the limits of Mysore territory.

32. After the introduction of the Income-tax Regulation in Mysore in 1920, the Commissioner of Income-tax (Mr. K. Matthan) corresponded with the Agent of the M. & S. M. Railway Company in the matter of the levy of income-tax on the profits of the Company accruing in Mysore. The Agent agreed to pay tax on the profits earned by the Company from the State lines worked by them, but repudiated liability to pay tax on the Bangalore-Bisanatham Section of the Madras-Bangalore Railway, on the ground that no separate accounts were maintained for the portion of the Broad Gauge line traversing over Mysore territory. He also suggested that special orders of the Government of India might be obtained, and referred to the Railway Board's letter of the 9th June 1913 in which it was notified that the Secretary of State for India in Council has full and exclusive jurisdiction of every kind over all the lands lying within the (Indian) States specified in the schedule thereto annexed which are occupied by the railways mentioned in the said schedule, of which the Bangalore-Bisanatham railway was one. This letter and subsequent reminder sent by me as Income-tax Commissioner seem to have been lost sight of in the Secretariat.

33. The Secretariat notes in the file fully discuss the points raised in the M. & S. M. Railway Company Agent's letter. That no separate accounts are kept for the portion of profits attributable to business in Mysore can be no excuse for not paying the tax. The Company is bound by law to maintain such accounts as will enable them to render the return of income due to the Mysore Income-tax Department. The Railway Board's letter referred to does not support the Agent's contention, as the Bangalore-Bisanatham Section of the Broad Gauge line is one of the many railway lines traversing in Mysore in respect of which jurisdiction for certain purposes has been ceded and the Company has been paying tax on the profits of all the other lines included in the schedule attached to the Railway Board's letter. The opinion of the Local and Legislative Secretary, which has also been obtained is that the internal rights of the Government of His Highness are left unaffected over the territory ceded for railway purposes and that the Company cannot, therefore, claim exemption from Mysore Income-tax on the grounds urged.

34. In these circumstances, it has been decided to issue instructions to the Commissioner of Income-tax to inform the Agent accordingly, and to proceed to assess the Company for the current as well as the previous year under the provisions of the Mysore Income-tax Regulation.

35. As the tax due for the previous years has been paid to the Government of India and a refund of such tax is due to us from that Government, it is proposed to address the Residency to arrange for the refund of tax due. The points alluded to above have been briefly mentioned in the draft letter.

36. I report the matter for the gracious information of His Highness and approval to the draft letter to the Residency.

BANGALORE,
21st August 1925.

K. CHANDY,
Member of Council.

Subject.—Draft letter to the Residency *re* levy of income-tax on the profits of the Broad Gauge line of the Madras and Southern Mahratta Railway Company lying within the limits of Mysore territory.

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37. *Order.*

K. R. W.
31-8-25.

1. *No. Pol. 210, to the Secretary to the Hon'ble the Resident dated 10th September 1925.*

Explains how the M. & S. M. Railway Company is liable to Mysore Income-tax on the profits of the Broad Gauge line within the Mysore Territory and informs that the Commissioner of Income-tax in Mysore has been directed to proceed to assess the company for the years 1924-25 and 1925-26 and requests that the Government of India may be moved to arrange for the refund to the Mysore Government of the portion of the tax due to Mysore for the years 1920-21 to 1923-24, as the same has been included in the tax levied by the Government of India on the entire profits of the Company.

To the Commissioner of Income-tax—Fl. 1552, dated 10th September 1925. Forwards copy of the above.

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2. *No 7965, from the Secretary to the Hon'ble the Resident, dated 20th September 1925.*

Enquires whether there are any special circumstances in justification of the delays in preferring the Mysore Government's claim to the refund and requests that a copy of the correspondence with the Agent of the M. & S. M. Railway on the subject may be forwarded.

Submitted for consideration.

Copy of the letter may be sent as called for by the Revenue Secretary. As regards the delay, the question of assessing the Company was raised so long ago as 1920 and the question was lost sight of.

This is the real explanation though some time had to be taken for obtaining legal opinion.

The refund is not claimed under the Income-Tax Act as an ordinary assessee should do and no question of limitation should arise in this case.

B. S.
7-10-25.

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3. *To the Secretary to the Hon'ble the Resident Pol. No. 279, dated 13th November 1925.*

Explains the cause for the delay in perferring the claim.

4. *No. C. 242, from the Commissioner of Income-Tax dated 24th November 1225.*

States that the Deputy Commissioner of Income-tax for Bangalore and Mysore has assessed the M. & S. M. Railway Company for the Broad Gauge section for 1924-25 and for the Meter Gauge Section and Broad-Gauge Section for 1925-26.

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5. *No. C. 5087, from the Commissioner of Income-Tax dated 9th June 1926.*

Forwards copies of communications from the Chief Auditor, Madras and Southern Mahratta Railway and the Secretary, Railway Board, stating that no further recoveries in respect of Mysore Income-tax on salaries of Railway employees of the Company will be effected.

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6. *No. 5087, from the Secretary to the Hon'ble the Resident dated 11th June 1926.*

States that as the Mysore Government have ceded full and exclusive jurisdiction over the lands in Mysore occupied by the Madras and Southern Mahratta Railway, they are precluded from enforcing the Mysore Income-tax Regulation in such lands and requests that arrangements may be made to refund a sum of Rs. 24,693 wrongly adjusted in the past four years.

38. The question of the rights ceded to the Government of India on the transfer of "full jurisdiction" over the Railway lines in Mysore has never been satisfactorily solved. There was a good deal of correspondence on this subject in 1908 in connection with the claim of the Government of monopoly rights over sandal trees growing on Railway lines. In his reply, dated 26th October 1909, the Resident asserted that the term "full jurisdiction" included the exercise of fiscal rights, although permission to remove sandal was given on the ground that the Government of India had no desire to raise revenue for themselves in the lands ceded.

39. The right of the Mysore Excise Department to issue license for the sale of liquors in the Railway refreshment rooms which had been exercised for a long time past was allowed to continue by the Resident in his letter, dated 5th December 1910, although it was stipulated that, should circumstances necessitate, the Residency would take up the matter again at the point at which these matters were left by Mr. Fraser. This refers to the contention in the Residency letter No. 3914, dated 27th July 1908 that none of the Mysore laws could be enforced in the Railway lands over which jurisdiction was ceded to the Government of India.

40. The Government of India have refunded to us the surcharge levied under the freight tax 1917 only on the Railways owned by the State. The question of the refund of the proceeds of the tax realised on the Bangalore-Bisanatham Section of the M. & S. M. Railway is still under correspondence. In 1918, the Government moved the Government of India to retransfer the jurisdiction now exercised by them on the Railway lands in the State. In their reply, dated 15th May 1920, the Government of India postponed their final decision on our proposals until they were in possession of the views of the Ruling Princes in regard to future railway policy in the Native States, which they said would soon be considered in the permanent Committee of Princes. It seems, therefore, desirable that the whole question should be considered fully now, as the Government of India in their recent letter have definitely raised the issue that our Income-tax law has no operation in the Railway lands over which full jurisdiction has been transferred to them.

41. In order to avoid elaborate noting on the subject, I have submitted for consideration a *draft letter* to the Residency. The points raised in the draft letter are as follow:—

(1) That the Notification regarding the transfer of jurisdiction over the Railway lands continues to vest the sovereignty in the lands in His Highness the Maharaja and acknowledges his powers of taxation on goods carried over Railways on such lands.

(2) That the jurisdiction transferred was simply civil, criminal and police jurisdiction necessary for the administration of justice along the Railway line.

(3) That the whole tenor of the correspondence between the Mysore Government and the Residency on this subject shows that the transfer of jurisdiction was made simply for administrative convenience, with a view to enable the Imperial Government to exercise control over the Railway and that there was nothing derogatory to the prestige of the State in such transfer.

(4) That in the analogous instance of the transfer of jurisdiction over Railway lands in Hyderabad State, the Privy Council have fully supported the interpretation given above.

(5) That the Residency have admitted that it was not the policy of the Government of India to raise revenue on Railway lands over which jurisdiction has been ceded and that the monopoly rights of the State in sandal growing on such lands have been recognised.

(6) That the proceeds of the sur-charge levied under the Freight Tax Act 1917 on the traffic over the Railway lands owned by the State have been refunded and the claim of the Government for the refund of the proceeds realised on the lines owned by the Southern Mahratta Railway have been urged and are under the consideration of the Railway Board.

(7) That the right of the Mysore Government to receive the surplus revenues, including the proceeds of the income-tax, of the Civil and Military Station over which exclusive powers of management and all jurisdiction have been assigned to the Government of India has been acknowledged and it is obvious that the State is entitled to the income-tax on the earnings of the Railway working on such lands over which only jurisdiction has been transferred to the Imperial Government.

(8) That the Railway lands under advertance do not form part of British India and as it is believed that the Indian Income-tax Act has not been applied to these lands, unlike the Civil and Military Station, Bangalore, the earnings of the Railways on the traffic carried over these lands are not liable to the Indian Income-tax; and if it should be held that the Mysore Government are precluded from levying income-tax on these earnings, owing to the cession of jurisdiction to the Government of India, they would not be liable to the income-tax of either Government.

C. R. S.
27-7-26.

Second Member.

42. The questions about which action has to be taken are the following :—

(1) The direction of the Government of India to the Agent, M. & S. M. Railway " to cease to pay income-tax to the Government of Mysore in respect of the profits of the Mysore State lines and to cease to recover income-tax from the employees of the M. & S. M. Railway Company on behalf of the Government of Mysore unless the employees are paid in Mysore territory : " *vide* enclosure to Residency letter dated 11th June 1926.

(2) The view of the Government of India that " as the Mysore Government ceded full and exclusive jurisdiction of every kind over the lands in their territory occupied by the M. & S. M. Railway and over all persons and things whatsoever within those lands, they are precluded from enforcing the Mysore Income-tax Regulation in such lands ." According to this view, the income and super taxes claimed in our letter dated 10th September 1925 in respect of the Bangalore-Bisanatham Section of the Madras Railway will not be paid to us for the period from 1920-21 to 1923-24 or for subsequent years.

(3) Claim of the Government of India to the refund by us of Rs. 24,693 which is the amount of rebate allowed by that Government to the Company : *vide* paras 3 and 4 of the Residency letter dated 11th June 1926.

(4) Whether the notice to furnish a return of total income for 1926-27 should or should not be issued to the Company, pending modification of the view taken by the Government of India in regard to (1) and (2) *supra.*

43. *Question 4.*- We cannot accept the position taken up by the Government of India in regard to questions (1), (2) and (3). The Income-tax Commissioner may, therefore, be authorised to issue a notice to the Company calling upon it for return of total income from all lines worked by it within the State, including the Bangalore-Bisanatham Section. The Company may also be called upon, as hitherto, to collect the tax from its employees residing on railway lands and hand it over to us.

I think it is necessary to enforce our law in the usual course. The non-issue of notices and of assessment orders has given rise to controversies in the past; *vide* para 1 of Residency letter dated 29th September 1925.

44. *Questions* (*1*), (*2*) and (*3*).—I do not think it is necessary to advance all the arguments urged in the draft proposed by the Revenue Secretary. It is not necessary to refer at great length to previous discussions on allied subjects. The attitude of the Government of India in regard to matters of this kind was not quite reasonable in the past and it has for some time past, been slowly undergoing considerable modification in the proper direction. In view of this changing attitude, the view of that Government communicated in the Residency letter dated 11th June 1926 is somewhat surprising. I think it will be sufficient to base our reply to this view on general grounds which may be the following:—

(1) The cession of jurisdiction was only for railway purposes. No other view of the cession is reasonable.

(2) All rights over the ceded lands except those relating to the use of the lands for purely railway purposes vest in the Mysore Government.

(3) The cession was not intended for the pecuniary benefit of the Government of India or for depriving Mysore of its revenues, and accordingly the appropriation by the Government of India of the income and super taxes in respect of incomes and profits made on railway lines within the State is not justifiable.

(4) It is the present policy of the Government of India to reduce even their existing powers on lines in Indian States "to the minimum necessary for railway purposes:" *vide* Residency letter dated 28th July 1926. We have asked for complete retrocession of jurisdiction over railway lines in Mysore: *vide* our letter dated 16th August 1926. The present claim to levy taxes in respect of areas over which jurisdiction for railway purposes is ceded, is opposed to such policy.

(5) Ceded areas are included in the term "Dominions of Princes and Chiefs in India in alliance with His Majesty:" Government of India Resolution dated 26th March 1918 quoted on page 75 of the Government of India Income-tax Manual *vide* No. 791—F. The British Indian Law relating to income and super taxes cannot be applied to the M. & S. M. Railway Company: *vide* Section 1 (2) of Act of 1922.

(6) Last year, the Government of India passed a law making "the Government of any part of His Majesty's Dominions exclusive of British India" liable to income and super taxes in respect of any trade or business carried on by or on behalf of such Government in British India. The Central Board of Revenue has interpreted this law as applying to Governments of Indian States. If the Government of an Indian State carrying on a business or trade in British India is subject to tax, it is difficult to understand why a company carrying on the business of railway transport in an Indian State should not be made liable to the taxation of that State. Strictly, applying the principle of reciprocity, even the profits which the Government of India make over the Bangalore-Bisanatham Section of the Madras Railway should be held liable to the Mysore Income and Super taxes. When such is the position created by this new law, it is not fair on the part of the Government of India to contend that the M. & S. M. Railway Company should be exempted from Mysore tax in respect of the profit which it makes in working railway lines within the State.

45. In the circumstances stated above, we may inform the Government of India that we cannot agree in the view held by them and that they may kindly reconsider the matter and allow the M. & S. M. Railway Company and its employees to be taxed under the Mysore Income-tax law. We may also add that proceedings for purposes of assessing the Company are being taken in the usual course and that this action is being taken to prevent requests for relief on the ground that the claim to tax was not preferred in time.

M. N. KRISHNA RAO,
18-8-26.

46. I agree with Second Member generally.

The draft covers too many points; and the *manner* of presentation may be improved.

Before putting up a revised draft, the views of the Local and Legislative Secretary may be recorded and verified soon. He has already noted in favour of our contention, but in view of Government of India's action, position should be examined again and our grounds strengthened, if possible. Whether we would be constitutionally in order in directing our Income-tax Commissioner to take steps (and coercive steps if Company fails to send returns) may also be noted. Some temper should perhaps be shown in our reply for Government of India's summary letter to Railway.

K. C.
19-8-26.

47. I have given my full consideration to the very important question of sovereignty raised by the Government of India and have enclosed herein my considered opinion.

48. I have clearly shown after full examination of the correspondence and admissions made by the Government of India, that their contention is quite untenable.

49. As the question is of far reaching consequence, I submit that the Government may send a detailed memorandum embodying salient features of the case for the consideration of Government of India in the same manner as late Sir K. Seshadri Iyer did in pressing our right to retain jurisdiction.

50. Regarding the steps to be taken to recover the income-tax from the Railway Companies, I am of opinion that the Government would be in order to enforce the provisions of Regulation against the company for the recovery of dues for the year 1925-26.

51. If we neglect to take steps, we may lose our remedy by lapse of time.

If the Company wish us to refer the question to Chief Court, we may consider it favourably. I have no doubt in my mind that the decision of the Chief Court will no doubt be in our favour. The correspondence between the two Governments will not alter the rights of the parties in a court of law.

B. N.
31-8-26.

OPINION.

I have been asked to examine the position taken up by the Government of India in respect of the operation of the Mysore Income-tax Regulation over Railway lands. The question raised by the Government of India is that the Government of Mysore are precluded from enforcing the Mysore Income-Tax Regulation in Railway lands over which full and exclusive jurisdiction of every kind over all persons and things whatsoever have been ceded to the Government of India. In other words, the Government of India claim full sovereign rights over the Railway lands occupied by Railway in Mysore and treat it as a British territory for all purposes of exercising jurisdiction and legislation and taxation. From the nature of the issue raised, it is clear that the question is of wider and far-reaching consequence in that the British Government claimed as their own the lands occupied by the Railways in Mysore as well as those lands over which the Railway will be extended connecting it with Railways in British India. As the Government of India have raised this question in an acute form, it is very essential that our Government should carefully examine and if found that our position is strong, we have to emphatically deny their right and get a final decision upon this question. I will therefore deal, to some extent, exhaustively upon all the aspects of the case with a view to ascertain our position.

Solution of the question.

2. The solution of this question entirely depends on the amount of jurisdiction intended to be conveyed to the Government of India over these lands. As there is no express treaty and no words which in themselves precisely define the amount of jurisdiction intended to be conveyed by the Mysore Government, it becomes necessary to revert

to the correspondence which passed between those representing the two Governments to see in the first place what was asked for and what was ultimately conceded.

3. The printed papers relating to Railway jurisdiction in Mysore contain :—

Firstly, correspondence leading to the cession of jurisdiction over lands on which the Bangalore-Madras Railway has been built; and

secondly, the cession of jurisdiction over the land occupied by the Mysore State Railway.

From the Notification issued in both these cases it is clear that the amount of jurisdiction ceded to British Government is the same in both the cases. Hence both may be considered together.

4. Lands were acquired at the cost of Government and made over in 1859 by the Mysore Government to the Madras Railway Company for *bona-fide* purposes of constructing a Railway. These lands were made over to the British Government on conditions contained in Government resolution dated 22nd November 1877. The conditions are mentioned at page 5 of the printed papers. The conditions are :—

Firstly, the lands are given free for *bona-fide* purposes of railway;

Secondly, full jurisdiction in such lands, short of sovereignty rights, were ceded to British Government ; and

thirdly, the right to levy duty on goods breaking bulk has been recognised.

5. As regards the question of ceding jurisdiction over lands on which Mysore Railways were built, the correspondence on this question began first with a letter dated 2nd November 1888 from the Assistant Resident, to the Dewan of Mysore. In this, the Government of India indicated their policy and raised the question of jurisdiction for the first time. They observed as follows :—

" In reply, Sir Harry Prendergast has been informed that the Government of India have the fullest confidence in the ability of the Mysore Courts, but for the sake of administrative convenience, they desire that, as in other great Native States such as Hyderabad and Kashmir, so in Mysore—the jurisdiction upon lines of railway shall vest with the Imperial Government." This was after the transfer of the management of the Mysore State Railway to the Southern Maharatta Railway Company on 1st July 1886. After this reply, a long and protracted correspondence began between the representatives of the two Governments.

This letter was in reply to a letter from the Dewan of Mysore to the Resident on 2nd July 1886. In that letter the Mysore Government asked that they may be allowed to continue to exercise Civil, Criminal and Police jurisdiction and not required to transfer such jurisdiction to the British Government. From the letter and the reply, it is abundantly clear that from the commencement of the discussion on the question of jurisdiction the subject matter of correspondence related only to the exercise of Civil, Criminal and Police jurisdiction over the railway lands and nothing more.

Correspondence relates only to the cession of jurisdiction (Civil and Criminal).

6. In para 12 of the memorandum, the case of the Mysore Government for not giving up the jurisdiction till then exercised by them has been carefully and forcibly made out. It is important to note in this connection that His Highness the Maharaja while showing his loyalty even to make the territorial assignment required, to give effect to the wishes of the Government of India submitted the question of cession of jurisdiction for the indulgent consideration and final orders of His Excellency the Viceroy. It has been shown clearly that the case of the Mysore Government differs materially from the circumstances connected with the Railways in other States. The main features of the Mysore Railways are :—

Firstly, that the Mysore State Railways continue to be State property hypothecated to the Southern Mahratta Railway Company for 50 years and liable to be redeemed at the end of that term. That nearly one half of the railway was constructed by the State from current revenues and a small loan and this is not the case with railways in Native States;

Secondly, the Civil and Criminal law is the same as that in force in British India and this is not the case in Hyderabad; and

thirdly, the existing law in Mysore cannot be altered without the previous consent of the Government of India. When Mysore redeems the Railway, the jurisdiction will naturally vest in it and there is no advantage apparently to be

gained by a temporary change of jurisdiction. The fact that the management of the railway in Mysore alone will always be under British control, will be sufficient for all practical Imperial purposes, and the exercise of jurisdiction over the line by the Durbar will cause no inconvenience whatever to the British Government. Their jurisdiction up to date has caused no such inconvenience and all that they ask is that the existing condition of things may be allowed to continue until it is found to produce any inconvenience.

7. The D. O. letter dated 18th December 1888, to the Resident, contains important observations :—

First, the Mysore State Railway was from the very beginning intended to belong to Mysore State ;

secondly, though the Maharaja binds himself to make over free of cost any lands required for British Railway the transfer of plenary jurisdiction in such land is a point for future examination upon grounds of administrative convenience. (*Vide* letter from the Government of India to the Secretary of State No. 26 dated 3rd March 1880);

thirdly, the letter from the Government of India to the late Chief Commissioner, dated 17th December 1880, shows that "the jurisdiction and management of the Mysore State Railway may best be left in the hands of the Mysore Government." In reply to that letter, the Government of India have expressly stated in their letter of 24th January 1881 that the Government of India concur in the views relating to jurisdiction and management of the Mysore State Railways ;

fourthly, the Government of India have clearly set forth their policy in Foreign Secretary's letter to the Mysore Resident dated 20th September 1881. The Government of India observed that the Mysore Railway cannot be "looked upon as one of merely local interest, but must be considered as forming part of the net work of Imperial Railways now so rapidly expanding over the continent of British India. It is therefore desirable that the same amount of supervision that the Government of India deems at present necessary for the general safety of the travelling public should be extended to the Mysore Railway." The rules which the Government of India then laid down were accordingly confined to the object of securing the safety of passengers. The Government did not even refer to the question of jurisdiction though there was a prospect of connection with the Southern Mahratta Railway Company at Harihar which was then foreseen. In the letter of the Assistant Resident dated 12th October 1881 communicating the above orders of Government it was stated that "it is to be understood that in the event of the Mysore line becoming connected with a general system of railways throughout India, the existing arrangements will be liable to alteration and may probably be considered modified in the direction of closer control by the Imperial Government." Thus with the expansion of our Railway, we were led to expect a closer control by the Imperial Government, but never any surrender of jurisdiction over Railway lands.

Policy of British Government.

8. In reply to the letter of 2nd November 1888, the Dewan of Mysore on 6th December 1888 set forth the views of His Highness' Government explaining that even for administrative convenience the Government of Mysore would be prepared to adopt such measures as will effectively safeguard the interests of European British subjects and that they were not prepared to hand over the jurisdiction to British Government.

9. In reply to this, Sir Harry Prendergast has definitely stated as follows in his letter dated 18th December 1888 :—"It is the policy of Government of India now to require cession of jurisdiction upon lines of railway, in Native States, which are not purely local. In pursuance of this policy, the Governor-General in Council has recently obtained jurisdiction in the States of Hyderabad and Kashmir by the free will of the rulers and now asks, as a favour, for jurisdiction in Mysore, not because His Excellency is sceptical about the ability of the Mysore Courts, but simply for the sake of administrative convenience. I may mention that the Nizam's Railway like the Mysore line was at first constructed solely from the resources of the Native State ....I trust that you will agree with me in the opinion that no loss of prestige is involved in a voluntary cession in the interests of Imperial Administration, a cession already granted by the other great Native States

Policy.

and one that might be gracefully offered by the Government of His Highness the Maharaja of Mysore and would be gratefully accepted by the Government of India."

Hyderabad case.

10. This letter follows immediately after the cession of jurisdiction in the lands used for the construction of railway in Hyderabad. On the 28th of March 1887, we find the British Resident in Hyderabad writing to the Minister of that State as follows:—

"The thing desired by the Government of India was sufficient power for the Railways to enable the Magistrate and Police Officers recently appointed with the Nizam's consent to perform their duties" and he suggested a transfer of criminal and civil jurisdiction over the Railway lines. The British Resident clearly stated that "the grant of lands for carrying on a small piece of administration in a more legal and efficient mode than has hitherto been found possible can possibly be viewed as a commencement of annexation of large tracts in His Highness' dominions by the English Government." He concluded thus:—

"I hope that this letter will serve to 'clear the air' a little about what really is only a matter of administrative convenience and is absolutely free of any such far-reaching consequences or designs as the draft letter would seem to prognosticate from it."

11. In reply to that letter, the Nizam's Minister stated that His Highness' Government was willing to accede to the wishes of the Government of India regarding the Civil and Criminal jurisdiction along the line of Railway as is the case with other lines running through Independent States. [See 25 Cal 20 at pages 32 and 33 P.C.] Thus from the correspondence in Hyderabad it is more than manifest that the only jurisdiction given is a criminal and civil jurisdiction along the line of Railway as in the case of other lines running through independent States and nothing more. It is perfectly plain that no cession of territory was granted in Hyderabad and that only a jurisdiction to exercise Civil and Criminal functions over the land was ceded. Reference to this is made in the letter of 18th December by the Resident to the Dewan of Mysore. Therefore, it is clear that what was asked by the Resident on 18th December 1888 was the same jurisdiction as was ceded to the Government of India by the Nizam. This I have quoted to show that the Privy Council construed "full jurisdiction" granted under similar circumstances to mean only the exercise of civil and criminal jurisdiction.

General principles.

12. In D. O. letter dated 9th January 1889, from the Assistant Resident, to the Dewan it has been observed as follows:—

"The Resident would point out that whatever construction may be put upon the terms of words, the salient feature in the policy of the Government of India towards the Mysore State Railways has been its desire to make "no marked departure from the broad general principles under which all the Railways in India are now controlled." It has never been the intention of the Government to make any exception in the case of the Mysore Railway and it may safely be inferred that the Instrument of Transfer was not intended to contain any provisions contradictory to the professed policy. One of the most familiar broad principles which the Government follows is to reserve to itself the power to assume jurisdiction on the railways in Native States when their connection with other lines or their union with the net work of Imperial Railways in India renders this course desirable on grounds of administrative convenience."

13. To this, the Dewan in his letter dated 2nd February 1889, to the Resident in Mysore, replies as follows:—

"His Highness has, however, always been under the impression that the uniformity thus insisted upon had reference to management and control so as to ensure the safety of passengers and not to jurisdiction. His Highness asked for special indulgent consideration at the hands of the British Government on the ground that there was no uniformity in procedure as regards jurisdiction over Railway lines in Native States."

Scheme suggested.

In a D. O. from the Dewan on 20th May 1889, to the Resident in Mysore, His Highness expressed himself that "he is most anxious to do everything in his power to promote administrative convenience" and suggested a plan to employ European British subjects (to try offenders) and that he would give effect to a scheme so as to make the

Durbar's exercise of jurisdiction on Railway lands as efficient and satisfactory as if the same were under the hands of the British officers. Even in the case of Police Administration, His Highness expressed a wish that a special Police Officer would be appointed as a Police Magistrate and he would place him in subordination to two European British subjects and His Highness passed orders regarding the Police and Magisterial work on the State Railway line entrusting the work to European officers.

14. The inference to be drawn from this correspondence is irresistible, namely, that the jurisdiction asked for was only in respect of exercise of Civil, Criminal and Police jurisdiction over the Railway lines.

Inference.

In the letter of the Resident, 2nd April 1891, it is observed as follows :—

"The Durbar's exercise of control over railway jurisdiction has been efficiently and loyally carried out and no cause of complaint has arisen but since that letter was written the subject has been very carefully considered by the Government of India and it has, I regret to inform you, felt itself compelled to come to a decision adverse to the wishes of the Durbar.

It has been finally resolved that it is absolutely necessary as a question of Imperial policy that the Government of India should exercise control over any railway in the Native State which forms part of a line of continuous communication and in order to exercise that control must have jurisdiction over it. Some of the main reasons for this decision are :—

Reasons assigned for cessation of jurisdiction.

(*a*) The delay in the administration of justice which would occur in cases where the Native States had to apply for Extradition from British territory disappears when the jurisdiction is in the hands of the Government of India.

(*b*) Were jurisdiction not ceded, it must be divided, for the Indian Railway Act of 1879 (See Section 1) extends to subjects of Her Majesty on all Railways in Native States, independent of whether jurisdiction over the Railway has or has not been ceded by the Native State concerned.

(*c*) In no case could the courts of the Native State try European British subjects, which term includes mostly Eurasians (*Vide* Act X of 1882, Section 4, Clause (*u*), and, if jurisdiction were not ceded, it would happen that European British subjects and others when jointly charged with the same offence, would be tried apart by different Courts and under different laws.

(*d*) To lines over which jurisdiction is ceded, the Indian Railway Act is applied, and uniformity of procedure is thus obtained. Were jurisdiction not ceded, each State would have to try to frame an adapted Railway Act, whereby uniformity of procedure on the different lines would be considerably impaired.

There is nothing in the slightest degree derogatory to the dignity of the Mysore State in this decision..... . . . . . The Nizam's Government, you are no doubt aware has already ceded full jurisdiction over the Hyderabad lines. Under these circumstances, His Highness' Government will I trust, see the necessity of ceding jurisdiction over the lines now worked by the Southern Mahratta Railway."

15. Even after this final decision was conveyed, the Government of Mysore again pressed for a reconsideration of this decision in their letter of 24th August 1891. That letter expressly refers to the decision of the Government of India regarding the transfer to the British Government of jurisdiction (Civil, Criminal and Police) over the Mysore State Railway and gives a brief review of the past history of the State Railway to convince His Excellency that the transfer of jurisdiction now asked for will bear with undue and exceptional hardship upon the Durbar. This letter with its enclosure containing the opinion of late Mr. Ricketts followed by the opinion of the Judges of the Chief Court, shows clearly that the high contracting parties were concerned only with the administration of justice in respect of Civil, Criminal and Police and nothing more.

Pressing for re-consideration.

16. The final reply was received from the Resident to the Dewan on 9th April 1892. The Resident stated as follows :—

Final reply.

"That after giving the matter the most attentive consideration they feel unable to make an exception in favour of Mysore in this matter. The principle

which requires a cession of railway jurisdiction in all cases except on isolated local lines, is a principle from which the Government cannot depart. The inconvenience which must follow an attempt to apportion railway jurisdiction in different States according to the comparative efficiency of the State administration are too great and obvious to be undertaken. The Government of India willingly admit that if any State in India could be exceptionally treated without grave inconvenience, they would be disposed to look with favour on the request of the Maharaja of Mysore, but as matters stand, they must decline to reconsider their former decision, and they feel confident that His Highness will now accept that decision with the loyalty and good will of which he has given so many proofs."

17. In reply dated 10th June 1892, from the Dewan, it was observed "you are doubtless aware from the previous correspondence on the subject, of the strong feeling His Highness entertains on the question and you can therefore readily realise with how much regret he has received the views of the Government of India communicated in the letter under reference. But as His Highness is now required to surrender the jurisdiction, he has directed the issue of Notification, a copy of which I beg to enclose herein for your information."

The Government finally asked that the Section from Bangalore to Mysore and Nanjangud be excluded as being an isolated local line and hoped that similar local lines such as those proposed to Shimoga, Hassan and Chikmagalur will be likewise allowed to be excluded on the principle laid down in the Government of India's letter of 9th April 1892.

18. A reply was sent by the Resident on 21st March 1893. The Resident observes as follows:—

Admission.

"It seems to the Government of India unfortunate that the Mysore State should look upon the transfer of jurisdiction for purposes of administrative convenience as in any way derogatory to itself. Nevertheless in deference to the strongly expressed wish of the Durbar, a cession of jurisdiction over this section will not be insisted on. This exceptional cession is, I am to say, made on the understanding that if the line from Bangalore to Nanjangud should hereafter form part of a through Railway, or if Imperial interests should render such a course desirable, the Durbar must be prepared to transfer jurisdiction to the British Government without further discussion, and no similar concession can be granted in the case of branch lines which may hereafter be constructed as off-shoots to the existing system."

19. In respect of Kolar Gold Fields Railway a letter from the First Assistant Resident, to the Dewan dated 2nd November 1893 was addressed. It stated as follows:—

"I am directed to request the Resident may be favoured with a formal communication from the Durbar ceding, as in the case of the marginally noted lines of the Mysore State Railway, full Criminal and Civil Jurisdiction over the lands occupied by the Kolar Gold Fields Railway.

It is proposed to issue one general Notification including the lines noted on the margin. This will be done by the Government of India in due course when the Foreign Department Notification No. 292 I, dated the 5th February 1883, regarding the Bangalore Branch of the Madras Railway will be cancelled. Meanwhile it is understood that the Durbar will arrange for such jurisdictional arrangements as may be necessary on the Kolar Gold Fields Railway."

20. In the letter from the Dewan of Mysore to the Resident in Mysore dated 20th November 1893, His Highness the Maharaja agreed to transfer to the Governor-General in Council full jurisdiction on all lands occupied by the Bangalore Branch of the Madras Railway, Bangalore-Harihar line, the Hindupur-Bangalore line and Kolar Gold Fields Railway in the Mysore State.

21. In reply the First Assistant Resident stated on 26th February 1896 "I am directed to inform you that Her Majesty's Secretary of State has agreed that the administration of justice on the Mysore State Railway from Harihar to Bangalore including the extension to Hindupur and on the Kolar Gold Fields Railway should be undertaken by the Courts of the Civil and Military Station of Bangalore and that the Police establishment should be incorporated in the Bangalore force. The marginally cited

Agreement reached.

Notifications have accordingly been issued by the Government of India on the subject, copies of which are enclosed for the information of the Durbar." This is the correspondence that resulted in the cession of Railway Jurisdiction in Mysore.

Result of correspondence.

Conclusion reached.

22. If there is one thing that is manifest in the course of correspondence more than another, it is that the Government of India asked for only the authority to exercise Civil and Criminal jurisdiction over the Railway lands and premises and that the Mysore Government zealously refused anything in the nature of a cession of territory such as would confer by itself a local jurisdiction and strongly protested against the grant of any authority to the Government of India to exercise Civil and Criminal jurisdiction over the railway lands and premises as requested by the Government of India. All through the correspondence the Mysore Government have stoutly refused to grant the cession of jurisdiction both Civil and Criminal.

What has been agreed to by both the high contracting parties is that the administration of justice-both Civil and Criminal-over the Bangalore-Madras Railway and on the Mysore State Railway should be undertaken by the Courts of the Civil and Military Station, Bangalore, and that the full jurisdiction within the lands in the territory can only refer to the exercise of Civil and Criminal jurisdiction for the purposes of administrative convenience only and will not affect any sovereign rights of His Highness the Maharaja.

Effect of Notification containing "Full Jurisdiction."

23. It is important to observe that the Notification itself could give no greater authority than has been conferred by the agreement of the parties. That Notification can only give authority to the extent to which the sovereign of the territory namely, His Highness the Maharaja has permitted to British Government to make that Notification. So the full jurisdiction that is mentioned in it has only reference to the previous correspondence on the subject, namely, the question of jurisdiction—Civil and Criminal—for the administration of justice. This is an irresistible conclusion that can be drawn from the correspondence on the subject. This inference is confirmed by the Policy of Imperial Government in respect of jurisdiction over Railway lines running in independent States.

Policy of British Government in re Railway Jurisdiction throughout India.

24. From the history of jurisdiction exercised by the Government of India over the Railway Lines in India, it is clear that the Indian Railways especially in the West and Central parts of India where Indian States and British Indian territory were interlaced, it had been found to require the exercise of extra-territorial jurisdiction to secure the administration of justice. Different jurisdiction at short intervals along the line of a railway could not have worked effectively to repress crime and maintain order. Moreover the different laws that were prevailing in different Native States were not adequate to deal effectively with the offences and causes of civil nature in which the European British subjects were involved. Therefore it had been conceded that there should be one jurisdiction only which should be that of the Paramount Power. The Government of India laid down a principle which required a cession of railway jurisdiction in all cases, except on isolated local lines and they were averse to depart from this established principle. (*Vide* letter from Sir Harry Prendergast, the Resident in Mysore, to the Dewan of Mysore, dated 9th April 1892.) In order to secure this object, a plan of cession of territory for the purpose of administering justice on the lines of Railway in independent States at one time followed but this plan had been abandoned as inexpedient and the grant of jurisdiction (Civil and Criminal) over the lines comprised within the Railway limits had been by treaties and agreements obtained in respect of Native States by the Government of India. In the latter case it is obvious that the lands occupied by the Railway Company were not considered in any sense a British territory. In other words the imperium in these lands vested with the sovereign who granted these lands. The reason is that the cost of providing these lands for *bona fide* Railway purposes was defrayed at the expense of the State. The ownership in these lands had never been parted to the Government of India. (See the observations of Mr. Asquith Q. C. (now Lord Oxford) and of Mr. Cohen Q. C. in 25 Cal. 20 at P. 26 Etc. P. C.)

26. The exact amount of jurisdiction as interpreted by the Privy Council in the case of Hyderabad will *a fortiori* apply to the case of Mysore as has been

explained above. The Privy Council have held that the authority given by Nizam to the Government of India upon lands within the limits of Hyderabad State Railway is only the exercise of Criminal and Civil jurisdiction and that the Railway lands remain part of the dominion of His Highness the Nizam. (25 Cal. 20 P. C.)

(In other words the sovereign rights over the lands occupied by the Railways in the State were never ceded by the grant of full jurisdiction (Civil and Criminal). This interpretation from the highest authority ought 'to clear the air' and apply with equal force to the full jurisdiction given by the Mysore Government over the Railway lines, especially when in the correspondence we find that the Government of India have asked for only the same jurisdiction as was given in Hyderabad and Kashmir in accordance with their established principle.

27. The legal interpretation to be placed upon the term "Jurisdiction" leads clearly to the conclusion that the sovereign rights to impose taxation and to legislate even has not been taken away by the grant of full jurisdiction for administration of justice. I have already exhaustively dealt with this aspect of the question in my note dated 8th March 1924 in regard to the claim of surcharge preferred by the Mysore Government. (*Vide* paras 11 and 12, in my note). I shall only add a few observations to those already mentioned in my note.

Legal interpretation of the term jurisdiction.

28. The Notification of 6th February 1896 was issued in exercise of jurisdiction and of the powers conferred by Foreign Jurisdiction Act 1879. Assumption of power under this Act is a clear indication that the Government of India had no Imperium nor Dominium over these lands. The Foreign Jurisdiction and Extradition Act 1879 declares only the powers granted by Native rulers over their territories and their exercise is regulated by the terms of the grant of such power. There was no necessity to mention this Act in the Notification if there was really a cession of territory such as would confer by itself a local jurisdiction.

Argument based on the exercise of power under Foreign Jurisdiction and Extradition Act 1879.

29. I shall now examine how the term jurisdiction has been defined and interpreted by the Government of India and acted upon. In Regulation I of 1886 (Criminal Procedure Code) which has received the assent of the Governor-General in Council, the expression jurisdiction in Section I of the Regulation has been held to mean jurisdiction 'to enquire into or try a charge.' Plenary jurisdiction as used in Art. 17 of the Instrument of Transfer corresponding to Article 16 of the Mysore Treaty, has been interpreted to mean jurisdiction to administer the Criminal Law with reference to British subjects and has no manner of connection with legislation (See 26 Madras p. 607 at p. 613.)

How the Government of India have interpreted the term Jurisdiction? How the courts have interpreted it?

Under Art. 16 of the present treaty plenary jurisdiction over European subjects has been vested in the Governor-General in Council. If the plenary jurisdiction were to include legislation on criminal matters then the Maharaja would have no right to legislate on criminal matters to bind European subjects for plenary criminal jurisdiction has been vested in the Governor-General in Council by the Treaty. That this is not the interpretation is clear from the fact that the Governor-General in Council himself has given his assent to the passing of the Mysore Mines Regulation, Forest, Excise and Municipal Regulations and the amendment of the Indian Penal Code in force in Mysore. The penal provisions of these regulations are applicable to European British subjects on the principle that a man in a country is amenable to the criminal laws of that country whether he is a subject of that country or not. (See Wheaton on International Law Sections 84 and 130). Queen v Ganz L. R. 9 Q. B. D. 93 at p. 100). This view of the law, namely, that the Maharaja has power to legislate so as to bind European British subjects is decided by the full Bench of Madras High Court in 26 Madras 607 in spite of the plenary jurisdiction being vested in Governor-General in Council. The conclusion is therefore irresistible that jurisdiction has been used in the sense to exercise and try offenders and adjudicate upon the civil rights of the parties only and it has no wider significance than that.

30. Now I shall deal with the question of estoppel. The Government of India have stated clearly that no sovereign right over this tract has been ceded. (*Vide* Notification of 1877) and that the Government have a right to levy the duty upon goods breaking bulk. This confirms the absolute right of the sovereign to

Declarations at the time of the grant and the subsequent conduct. Question of estoppel.

make laws and to impose taxation upon the subjects residing in those lands ceded to British Government for the purpose of administration of justice only.

31. The Government of India have conceded the right of the Mysore Government to the surplus revenues of the Civil and Military Station, Bangalore which includes the receipts under income-tax in spite of cession of all jurisdiction over the ceded area.

32. The right to sandal wood growing on railway lands has been conceded. It has been expressly stated by the Government of India in their letter of 26th November 1909 to the Dewan of Mysore that it is not the policy of the Government of India to exercise the fiscal rights which might be conveyed to them by a cession of full jurisdiction and they have no desire to raise revenue for themselves in the lands to which the cession relates. This is an important admission showing that they have neither Imperium or Dominium over the Railway lands in Mysore.

Policy of Government of India not to exercise fiscal rights and no desire to raise revenue to themselves in these lands.

33. They have also yielded to our claim to refund the surcharge under the Freight Tax Act 1917 on the traffic over the Railway lines in Mysore owned by the State. This refund is consistent with the sovereign right of His Highness the Maharaja over the tract in question. The declarations made in the correspondence followed by the other overt acts would therefore estop the Government of India from denying the sovereign rights of His Highness the Maharaja over the lands occupied by the Railways in Mysore.

Claim to surcharge levied under Freight Tax Act 1917 has been conceded.

34. The question now raised is in respect of Income-tax Regulation. The Income-Tax Regulation imposes a territorial limit either that from which the taxable income is derived must be situate in Mysore or the person whose income is to be taxed must be resident there. In other words the application of the Regulation depends on the territory being part of Mysore dominion. As has been observed above, the lands over which the railways are built in Mysore are part of the dominion of Mysore and as such the Income-tax Regulation operates and the jurisdiction to exercise civil and criminal functions ceded to the Government of India will not make that land a British territory in any sense of the term so as to preclude the operation of Mysore Income-tax Regulation over that area. This is rather conceded by the Government of India in that their Income-tax Act is not in force in that territory and in their G. I. No. 791 F., dated 26th March 1918 it is laid down that the British Income-tax Act has no application to "Frontier Agency tracts and ceded areas in the dominions of Princes and Chiefs of India in alliance with His Majesty." Hence the contention of the Government of India that the Mysore Government are precluded from enforcing the Mysore Income-tax Regulation in lands occupied by Railways in Mysore is quite untenable.

Income-tax Act operates in land belonging to the Sovereign, *i.e.*, land forming part of the dominion of Mysore.

I shall now summarise the conclusions reached :—

(1) From the correspondence between the two contracting parties it is clear that what was asked for and what was ultimately conceded was only the exercise of Civil and Criminal jurisdiction over the railway lines running through Mysore territory for the purpose of administering justice, *i.e.*, for the purpose of administrative convenience.

(2) There was no cession of territory to British Government renouncing any claim to sovereignty over the Railway lands. This is in accordance with the established principle of the Imperial Government in respect of jurisdiction exercised over all Railway lines in British India and in the Native States, for example Hyderabad. (See 25 Calcutta 20, decided by the Privy Council).

(3) The jurisdiction as used in the Notification is confined to the exercise of Civil and Criminal functions and does not extend to legislation or taxation. The words "Full Jurisdiction" in the final Notification must be construed to mean only civil and criminal jurisdiction for administering justice which was conceded by the Ruler of the State, as evidenced by the correspondence, for 'the stream cannot rise higher than the source.' If the Notification issued by the Government of India contains anything more than what was agreed to be conveyed by His Highness, it will be *ultra vires* and not binding on the Government of Mysore. Notification by the Government of India cannot extend beyond the authority given by His Highness the Maharaja.

(4) The term jurisdiction has been defined and acted upon by the Government of India in the sense to enquire and try an offender and adjudicate upon the causes between the parties.

(5) The declared intentions of the Government of India and their subsequent conduct estop them from denying the right of the Government to exercise the sovereign rights and levy income-tax in the lands occupied by the Railways.

(6) Lastly since the lands over which the railway lines have been built do undoubtedly form part of the Mysore territory, the Mysore Income-tax Regulation applies to that territory.

B. NAGAPPA,
31st August 1926.

"CHANDRA VILASA," BANGALORE CITY.

20th September 1926.

DEAR MR. MIRZA ISMAIL,

It has taken me some time to go through and study the papers sent for opinion with your letter of the 13th instant; and I have also had to consult some other references.

2. The problem of Railway Jurisdiction is a rather difficult and vexed one, and has given rise to much controversy in the past without leading to any definite solution. Much may be and has been said on both sides; but unless we can urge grounds likely to find acceptance with the Government of India, the mere reiteration of plausible assumptions and arguments of the kind put forth in several of the notes in the file is not calculated to facilitate a solution now.

3. The question that has actually arisen for disposal is whether the Mysore Government is entitled to levy income-tax on the profits earned by the Madras and Southern Mahratta Railway Company on railway lines whithin the Mysore State over which "plenary jurisdiction" has been conveyed to the Governor-General in Council. On this question the position taken by the Government of India is that "as the Mysore Government have ceded full and exclusive jurisdiction of every kind over the lands in their territory occupied by the M. & S. M. Railway and over all persons and things whatsoever within those lands, they are precluded from enforcing the Mysore Income-tax Regulation in such lands."

4. If this position is to be successfully controverted, we must either make out that the jurisdiction ceded was not "full and exclusive," or show that, in spite of the grant of such jurisdiction, the Mysore Government has the right to enact a fiscal law like the Income-tax Regulation applicable to railway lands and to enforce it within the limits of such lands.

5. Upon the question as to the exact nature and extent of the jurisdiction transferred, practically everything that can be usefully urged was already set forth in the two marginally noted communications* sent by us to the Residency when I was Secretary to Government. We tried to show, by reference to the correspondence that passed between the Durbar and the British Government on the subject of the cession of railway jurisdiction, that the "full jurisdiction" short of sovereignty rights transferred to the Governor-General in Council meant no more than the jurisdiction necessary for the proper management of the Railways concerned and the efficient administration of civil and criminal justice over them. We also relied on the Privy Council ruling in a somewhat similar case from Hyderabad (reported in 25 Cal. 30 to 34) as laying down that, in the circumstances of that case, the transfer of jurisdiction did not involve any cession of territory but merely conceded whatever was necessary for the sake of legal and administrative convenience. Our contention was that the transfer of "full jurisdiction" did not involve a cession of sovereignty, and as such could not affect rights not inconsistent with the exercise of such jurisdiction nor necessary therefor.

*Letters No. Pol. 1022, dated 16th June 1908 and No. 300 Pol., dated 30th October 1908.

6. The Resident of the time, Mr. S. M. Fraser, was, on the other hand, of the opinion that "full jurisdiction" includes "full and exclusive power and jurisdiction

of every kind over the lands occupied for railway purposes and over all persons and things whatsoever within the said lands,"—which, by the way, is almost the same formula word by word that is used by the Government of India on the present occasion. According to him, none of the Mysore laws are in force in the railway lands in question, to which the only laws now applicable are those valid for the time being in the Civil and Military Station of Bangalore. Our further arguments failed to convince Mr. Fraser; and eventually, at his suggestion, the question of jurisdiction was not pursued, and the claim to sandal trees was allowed on a different ground.

7. The matter therefore is reduced to this. Whatever may be the case with regard to the transfer of railway jurisdiction in the Hyderabad State, and there certainly was some difference in the wording,— the transfer that was made, in the case both of the Bangalore Branch of the Madras Railway, prior to the Rendition, and of the Mysore State Railway from Bangalore to Harihar including the extension to Hindupur subsequent to the Rendition, was of the "full jurisdiction on all the lands occupied" by the Railways, an expression which, it may be taken, is the same as the "full jurisdiction, short of sovereignty rights," that was ceded under the Notification of 1877 in respect of the Madras Railway. Article 15 of the Instrument of Transfer, reproduced in Art. 14 of the Mysore Treaty, means exactly the same thing.

8. Now, can it be contended that this is any way different in its scope and effect from the "renunciation of all jurisdiction" which is provided for in Art. 9 of the Instrument (Art. 8 of the Treaty) in respect of the lands granted for the maintenance or establishment of British Cantonments, and specifically of the Civil and Military Station of Bangalore which is held under its authority? Viewing the point as one of legal interpretation, I do not think that it is possible to draw any real or substantial difference. Unless there are any other material documents of which account has not been taken, I must say that both over the Railway lines and over the Station the Governor-General in Council has an identical extent of authority describable by the phrase "full jurisdiction short of sovereignty rights."

9. This however, does not help our position very much. The sovereignty rights reserved to the Maharaja are residuary or reversionary rights; and it is impossible to accept as correct the Secretariat suggestion that His Highness possesses in virtue of them a present right of legislation over the assigned area. No such right has ever been claimed or exercised ever since the jurisdiction over the Civil and Military Station was assumed by the British Government. It is that Government that has been uniformly passing the laws required for the Station; and as regards the Railway lands, the Government of India Notification of 6th February 1896, issued with our knowledge and acquiescence, has explicitly declared that "all laws for the time being in force in the Civil and Military Station of Bangalore shall be deemed to be in force in the aforesaid lands." I am afraid it is too late in the day to contend that His Highness the Maharaja can enact laws operative in the Railway area any more than he can for the Station.

10. If, then, there is no present power of legislation at all, how is it possible to maintain that the fiscal laws of the Mysore State are nevertheless operative? The case of the surplus revenues of the Civil and Military Station, on which the Secretariat bases an argument, has nothing whatever to do with the specific point before us now. For the right of the Mysore Government to such surplus is not derived from any admitted claim to impose and collect taxes directly, but is based on political and equitable grounds turning upon the purposes of the assignment. If similar grounds can be plausibly urged in regard to the Railway lands also, it may be possible to support the claim as one in respect of territorial rights to revenue generally, but not on the basis of a right of direct taxation.

11. I may observe in passing that there is obviously no special significance in the fact, suggested by the Secretariat, that the surplus revenues of the Station include, presumably, some portion of the receipts from income-tax also. The right to the surplus is conceded because it represents what is left over after meeting all necessary expenditure, not because it is made up of items to each of which the Mysore Government has a specific claim.

12. I have already alluded to the correspondence about the claim of the Mysore Government to sandal trees within railway limits. This was eventually allowed quite independently of the question of jurisdiction, and upon the ground that "it is

not the policy of the Government of India to exercise the fiscal rights which may be conveyed to them by a cession of full jurisdiction further than to protect British revenue, and they have no desire to raise revenue for themselves in the lands to which the cession relates." This, I may note, was the personal view of the then Resident; and it is just possible that, if we make use of it too strenuously to try and persuade the Government of India to forego income-tax revenue in the Railway area, that Government may repudiate any such principle of self-denial. Our appeal to that principle must be made in a somewhat diplomatic way.

13. I am rather surprised at the idea, suggested in the Secretariat file that the clause in the Instrument against the levy of duty or tax of any kind on through traffic carried by the railways, which may not break bulk in Mysore territory, is a recognition of the fiscal rights of the Mysore Government within the railway area. Of course it is nothing of the kind. Mysore cannot tax goods while they are on the railway line, but only if they break bulk and while they are being conveyed to or from the railway: (Cp. condition III of para 2 of the Government of India Notification of 22nd November 1877); that is to say, when the goods are actually on territory within State jurisdiction;—which is a different thing altogether, and quite within our rights.

14. Then there remains the analogy of the claim pressed by the Mysore Government for a refund of the surcharge on freight, the partial recognition of which by the Government of India is treated as lending support to the present claim to income-tax. So far as I understand the basis of the former claim, the matter is shortly this: When the Government of India directed a levy of surcharge under the Freight Act, as a special measure, pending a general increase in goods rates, the Mysore Government represented that the same causes (such as enhanced working expenses) which necessitated an increase of revenue from railways in British India operated also in the Mysore State, and that it was entitled in equity to a part, if not the whole, of the surcharge earned on railways owned by the State whether worked by the State directly or by the Southern Mahratta Railway Company. The Government of India admitted the justice of the claim in so far as related to the surcharge levied on traffic over railways owned and worked by the State; but hoped that the Mysore Government would not press its claim for reimbursement of the surcharge levied on traffic on the Bangalore-Bisanatham Section of the Madras Railway, which was owned and worked by the Company and in which the Mysore Government was not financially interested. Thereupon the Mysore Government contended (apparently shifting its ground somewhat) that the levy of surcharge was not, as stated by the Government of India, a temporary substitute for enhanced railway rates, but really a tax intended to add to the resources of the Empire in order to finance India's war contribution, and that though the Act authorised its levy only in British India, its levy was enforced also within the limits of the Mysore State. As it was thus really a tax collected in Mysore, the State, it was contended, was entitled to a refund of surtax on all railways irrespective of financial interest. This was in August 1925; and the matter is stated to be still under the consideration of the Government of India.

15. It is exceedingly doubtful whether the Government of India will now go back upon the view previously expressed as to the surcharge being simply a temporary enhancement of railway rates and not a tax or a duty on goods; and even more so whether, giving up their position of vantage, they will go further and concede the right of the State to the proceeds of the tax (treating it as such) collected within railway limits. The distinctly hostile attitude taken up by them on the income-tax question and their demand that we should even refund the income-tax already paid to us for four years on the Company's share of profits over the Mysore State lines worked by it, affords little room for encouragement. On the whole, I cannot say that we can found much of an argument for our present claim in respect of income-tax upon the circumstances that we were so fortunate as to obtain a share of the surcharge on the freight on State-owned Railways.

16. The opinions furnished by the Local and Legislative Secretary consist largely of quotations (not always indicated as such). He has cited largely from two reported cases, one of which is the Privy Council case in 25 Cal. 20 already referred to, and the other the observations some of them *obiter* of Mr. Justice Benson in the Full Bench case in 26 Mad. 607. (I may say, in passing, that I was myself deputed by the Mysore Government in the last mentioned case to instruct the

Public Prosecutor Mr. Sankaran Nair, and supplied him with a written memo of the arguments to be used). Neither of the two cases has really much bearing on the question before us. A decision is only an authority for what is actually decided. In the Privy Council case, the decision was merely that a person accused of an offence committed in British India could not be lawfully arrested, under the warrant of a British Indian Magistrate, on lands of the Hyderabad State Railway over which the Nizam had ceded "civil and criminal jurisdiction;" it did not touch upon the Nizam's own right to legislate or levy taxes within the transferred area. In the Madras Full Bench case the question was whether a European British subject was liable to prosecution for a breach of the Mines Regulation passed by the Mysore Government, and if so, whether a Justice of the Peace appointed by the British Government had power to try him therefor. The Judges decided both branches of the question, quite rightly, in the affirmative. Mr. Justice Benson, in dealing with Art. 17 of the Instrument which vests plenary criminal jurisdiction in the Governor-General in Council, observed that this did not necessarily transfer also the right to make laws binding on European British subjects. But it does not follow from this that the same construction would hold good where the transfer of jurisdiction is plenary and in respect not of a person, but of a place. Indeed, the learned Judge has himself pointed out the distinction when dealing with the article (No. 9) relating to the renunciation of jurisdiction over lands required for Cantonments; observing that there the word "jurisdiction" has been used in a wider sense as including the power to legislate; and he goes on to add, with special reference to the Civil and Military Station: "Since that time the Maharaja has retained the bare sovereignty of those lands, and what may, perhaps, be called the reversionary interest in the jurisdiction assigned, but all the actual powers of Government, including taxation and legislation, have in fact been exercised by the British Government."

17. I think I have examined all, or almost all, the grounds put forward in the notes and draft contained in the file. I do not think they are strong enough to warrant our laying claim to income-tax on the basis of our fiscal laws, and in particular of the Mysore Income-tax Regulation, being operative within the limits of the Railway area over which full jurisdiction has been ceded to the British Government.

18. In my opinion it would be better not to stress too much a questionable claim of direct legislation or taxation, but to appeal to the Government of India to take an equitable and statesmanlike view (somewhat in the same manner as they have done in the case of the surplus revenues of the Station) of the whole situation. The area in question is Mysore territory, over which jurisdiction has been given over for a specific purpose; the Government of India have in the past disclaimed any intention of exercising fiscal jurisdiction over railway land so as to raise a revenue for themselves in such land; and the Mysore Government feel justified in hoping that that policy will not be altered now to the prejudice of their just and proper rights so as to convert a transfer of jurisdiction short of sovereignty rights into what would, for all intents and purposes, be a surrender of sovereignty that was never intended. The question of retrocession of railway jurisdiction has been separately raised by the Mysore Government in connection with the general question of Railway Lands in Indian States: *Vide* the Chief Secretary's letter No. Pol. 175, dated 16th August 1926. Pending the final disposal of that question, His Highness' Government (we may say) will feel deeply grateful if the Government of India will allow the existing practice, in regard to the levy of income-tax on the Company's share of the profits of the Mysore State lines, to continue without interruption, and at the same time take a favourable view of the claim to income-tax revenue over all lines generally within the State. The analogy of the surplus revenues of the C & M Station may be pressed, not for supporting a right to levy taxation directly, but to show that the claim of the Mysore Government to derive revenue even over areas over which they have ceded full jurisdiction is a just and equitable one.

19. I do not know if the statement in the notes in the file, that the Indian Income-tax Act has not been applied to railway lands in Mysore, is correct. In any case, the Government of India may be trusted to arm themselves with full legal authority for any exercise of fiscal authority by them. It will suffice, so far as the Mysore Government is concerned, if the Government of India will concede our claim to this among other sources of revenue derivable from the area in question,

and help us to realise that claim either by permitting us to recover it direct or, if preferred, by collecting it themselves and making over the net proceeds to the Mysore Government. We may put our representation in some such general way, instead of touching needlessly upon the delicate and debatable question as to the legality of or procedure for direct recovery.

20. I have merely indicated some of the broad lines on which our claim to income-tax revenue may be put so as to find somewhat readier acceptance. If my opinion is accepted, it will not be difficult for the Secretariat to prepare a suitable draft on the lines finally decided on.

21. I return herewith the papers sent.

Yours sincerely,

K. S. CHANDRASEKHARA AIYAR.

Short note on the operation of the Mysore Income-tax Regulation over Railway lands.

From the correspondence between the two contracting parties, it is clear that what was asked for and what was ultimately conceded was only the exercise of civil and criminal jurisdiction over the railway lines running through Mysore territory for the purpose of administering justice, *i.e.*, for the purpose of administrative convenience.

There was no cession of territory to British Government renouncing any claim of Sovereignty over the Railway lands. This is in accordance with the established principle of the Imperial Government in respect of jurisdiction exercised over all railway lines in British India and in the Native States, for example Hyderabad. (see 25 Calcutta 20 decided by Privy Council.)

The jurisdiction as used in the Notification is confined to the exercise of civil and criminal functions and does not extend to legislation or taxation. The words "Full jurisdiction" in the final Notification must be construed to mean only civil and criminal jurisdiction for administering justice which was conceded by the Ruler of the State, as evidenced by the correspondence, for the stream cannot rise higher than the source. If the Notification issued by the Government of India contains anything more than what was agreed to be conveyed by His Highness, it will be *ultra vires* and not binding on the Government of Mysore. Notification by the Government of India cannot extend beyond the authority given by His Highness the Maharaja.

The term jurisdiction has been defined and acted upon by the Government of India in the sense to enquire and try an offender and adjudicate upon the causes between the parties.

The declared intentions of the Government of India and their subsequent conduct estop them from denying the right of the Government to exercise the sovereign rights and levy income-tax in the lands occupied by the Railways.

Lastly since the lands over which the Railway lines have been built do undoubtedly form part of the Mysore territory, the Mysore Income-tax Regulation applies to that territory.

THE PALACE, MYSORE.

1st November 1926.

MY DEAR MIRZA,

52. As you anticipated, your file regarding the levy of income-tax on railway profits reached me at rather a busy time, and I must confess to having given it a less careful study than it deserved.

53. I don't pretend to be a lawyer, but if the question is to be argued on legal grounds, it seems to me that the argument should commence with the question whether the income under consideration accrues or arises or is received in Mysore. This will raise the further question what is the legal meaning of the term 'Mysore' for purposes of the Income-tax Act, and whether the different agreements or notifications can exclude a portion of Mysore from the definition. I don't find that this is argued in the draft.

54. On the other legal questions involved in the case, many weighty arguments are adduced on one side by Mr. Nagappa and the other by Mr. Chandrasekhara Aiyar, but I don't propose to enter into these because I think you have a much stronger case if you leave the law open, or simply state that you are advised that it is not as the Government of India declares.

55. I think you have a very much stronger case, as Mr. Chandrasekhara Aiyar points out, on grounds of common sense and equity. It is very easy to establish by quotations that the Government of India secured cessions of jurisdiction for administrative purposes and purposes of criminal and civil jurisdiction, and that they have expressly disavowed any intention of securing it for purposes of revenue. They have ratified these declarations by their acts in relation to sandalwood and liquor licenses and transfer of the surplus revenues in the Civil and Military Station, and it is an extraordinary thing that they should have allowed the new administration of the Income-tax Department to proceed on exactly opposite lines. There can be no question that, in pressing this claim and the claim to enforce the Government Trading Taxation Act, in the Civil and Military Station, they are using jurisdiction secured for administrative purposes to enhance their revenue at the expense of the State which ceded the jurisdiction, in one case by taxing the State itself and the other by taxing a company which operates a Railway belonging to the State entirely within the State limits.

56. The question of retiring from even the jurisdiction already exercised over Railway lands is already before the Chamber of Princes, and from the correspondence it would appear that, on the general question, the Government of India are inclined to take a very reasonable view. It seems to me that your best chance of getting a hearing on these two income-tax questions is to raise them with the other and press them home as extreme instances in which one department of the Government of India is departing from the attitude taken by another. The matter is one on which you would be sure to secure support from other States which would be an important factor in raising it in connection with the Chamber of Princes.

57. In these circumstances, I would suggest that your present reply shouldbe a very brief but emphatic statement of the State's point of view, on grounds of equity rather than of law, coupled with the request that further action in both cases should be suspended by both sides until the general question raised by the resolution of the Chamber of Princes had been disposed of.

Yours sincerely,
C. G. TODHUNTER.

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58. I have perused the papers. There is considerable force in what Mr. Chandrasekhara Aiyar says. I think the draft should be one 'to put them to shame' for grabbing at revenue, after asserting that they had no such intention; and to claim the revenue that they collect on the analogy of the Civil and Military Station surplus. The curt way in which we have been treated should also be resented. There should be a sentence to say that we do not admit the correctness of their explanation of cession of jurisdiction but reserve the point.

In this connection, the Secretariat has to be *alert* whenever the Chamrajnagar-Satyamangalam link is taken up as Government of India have said that Civil and Criminal jurisdiction over Bangalore-Nanjangud and Chamarajnagar line will have to be re-ceded then.

K. C.
3-10-26.

I don't think they are likely to pass this matter. The trend of policy is to cede all jurisdiction to Indian States.

59. Mr. Chandrasekhara Aiyar has argued a little too much from the Government of India stand point! A draft reply may be put up basing our claims on gound of equity and general policy. A mild portest will have to be made against the action of the Government of India in asking the Railway Company not to pay us the tax, which was, to say the least, a most discourteous way of treating this Government.

M. M. I.
2-11-26.

Second Member with compliments.

60. I think a reply on the lines proposed may be sent and it may be based on grounds Nos. 1, 2, 3, 4 and 6 mentioned in my note dated 18th August 1926.

M. N. K.
3-11-26.

A draft letter may now be put up for consideration.

M. M. I.
3-11-26.

A draft for approval is submitted.
May issue and we may then submit to His Highness.

B. S.
13-12-26.

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7. *No. Pol. 555, to the Secretary to the Hon'ble the Resident, dated 21st December 1926.*

Communicates the views of the Mysore Government in the matter and states that the Government will be much obliged if the Government of India will re-consider their views and modify the instructions issued to the Madras and Southern Mahratta Railway Company by the Railway Board.

Submitted to His Highness.

61. I submit herewith a Final Note by the Second Member of Council on the subject of Levy of Income-tax on the profits of the Railway lines within the State worked by the Madras and Southern Mahratta Railway Company and on the income of the employees of the said Company residing on lands occupied by the Bangalore-Bisanatham Section of the Madras Railway for His Highness' gracious perusal.

CAMP SHIMOGA,
5th January 1927.

MIRZA M. ISMAIL,
Dewan.

Final Note by the Second Member of Council.

SUBJECT:—Levy of income-tax on the profits of the Railway lines within the State worked by the Madras and Southern Mahratta Railway Company and on the income of the employees of the said Company residing on lands occupied by the Bangalore-Bisanatham Section of the Madras Railways.

62. In Sir A. R. Banerji's Submission Note of the 29th August 1925, approval of His Highness was obtained to address the Residency to move the Government of India for the refund to the Mysore Government of the portion of the tax payable on the profits in Mysore of the Madras and Southern Maharatta Railway Company chargeable to Mysore Income-tax during the year 1920-21 to 1924-25.

63. In reply, the Residency, in its letter of 11th June 1926, states that the Government of India hold that the Mysore Government cannot levy any such tax, as full and exclusive jurisdiction of every kind over the lands in the Mysore Territory occupied by the Madras and Southern Mahratta Railway and over all persons and things whatsoever within those lands has been ceded to the British Government and that they have also directed the Railway Company not to pay any further tax to the Mysore Government and require the Mysore Government to refund the amount of Rs. 24,693 already collected by them.

64. The question of the right of the State to levy income and super taxes on the profits of the Railway Company and also on the incomes of persons living within the said lands has been carefully considered. The opinions of the Local and Legislative Secretary, *Dewan Bahadur Rajadharma Pravina* Mr. K. S. Chandrasekhara Aiyar, Retired Chief Judge, and Sir Charles Todhunter, Private Secretary to His Highness, have also been taken.

65. We cannot accept the contention of the Government of India that we have no right to enforce our fiscal laws on lands given for Railways. The cession of jurisdiction was only for Railway purposes and no other view of the cession is reasonable. All rights over the ceded lands except those relating to their use solely for Railway purposes vest in the Mysore Government. The cession was not intended for the pecuniary benefit of the Government of India or for depriving the State of its legitimate revenues. It is the present policy of the Government of India to reduce even their existing powers over Railway lines in Indian States "to the minimum necessary for Railway purposes". The claim of that Government to levy taxes in respect of areas over which jurisdiction only for Railway purposes is ceded, is opposed to such policy.

66. In view of what is explained above, a reply as in letter No. Pol. 555—I. T. 13-25-7, dated 21st December 1926, approved by the Dewan, has been sent to the Residency and I beg to submit the papers for the gracious perusal of His Highness.

BANGALORE,
3rd January 1927.

M. N. KRISHNA RAO,
Member of Council.

Order.

K. R. W.

13-1-27.

67. At the meeting held in the Dewan's Chambers on Wednesday the 13th July 1927, the decision arrived at in regard to this question is noted below:—

68. "The question is pending receipt of reply from the Government of India. A D. O. letter to Sir Basil Blackett for getting the matter expedited may be put up after the Viceroy's visit.

"It is presumed that notices calling for return for the year 1926-27 have issued; similar action should be taken for the current year."

69. Submitted for orders with a draft.

70. In view of altered circumstances whether a reference like this is expedient is for consideration.

B. S.
22-8-27.

2nd Member.

71. I do not quite follow what these circumstances are. I see no harm in sending a D. O. communication. The draft may be brief. Sir Basil is himself the Member in charge of Income-tax and the whole file will be in his office. What is needed is only a short letter referring to our communication sent through the Residency very briefly indicating the point in dispute and asking for early settlement.

M. N. K.
24-8-27.

Revised draft is submitted.

M. N. K.
2-9-27.

I shall speak to the Member about this.

M. M. I.
3-9-27.

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8. *Letter No.* 10523—148-1925, *from the Secretary to the Hon'ble Resident in Mysore, dated* 17*th October* 1927.

Communicates the views of the Government of India and requests that the amount of Rs. 24,693 *may be adjusted as already requested.*

M. V.
20-10-27.

Dewan's Orders :—

I hope a note is being prepared on the case.

The Pol. Secretary told me that the Law Department of the Government of India had expressed their opinion that we had no case.

I should like to see the papers once again.

M. M. I.
20-10-27

72. To Legal Remembrancer with compliments for favour of his further views—in the light of the Residency letter. Early return of the file is requested.

B. S.
3-11-27.

73. I have no further views to offer. The arguments advanced by Government of India have, to my mind, been completely met by me. I am still of the opinion that the Government of Mysore have not parted with their sovereign rights over the area which was ceded for Railway purposes only and that the Government of India have in equity bound to pay the Income-tax collected by them to Mysore Government assuming that they have a right to levy income-tax.

B. N.
11-2-28.

74. I submit for perusal and orders the Residency letter communicating the reply of the Government of India regarding the question of the levy of the Mysore Income-tax in the Railway area between Bangalore and Bisanatham, with the further opinion of the Legal Remembrancer.

75. A copy of the communication received in the Railway Department *re* reimbursement to this Government of surcharge levied on the line is also placed in the file.

76. From the purely legal point of view, the application of the Mysore Income-tax Law to the income accruing in the Railway lines in question may not be correct and I do not think Mr. Nagappa will press it now. We cannot, I fear, dispute the position taken up by the Government of India in this respect. But there can be no question that the sovereign rights over these lands are reserved to the Government of Mysore. Though it may be left to the Government of India to decide on the extent to which legislation should be applied in the area in question, the utmost that they can claim is that these lands should be treated in the same way as the lands given over for specific purposes *e.g.*, the lands of the Indian Institute of Science or the Assigned Tract of the Civil and Military Station. Even on this assumption, the tax on the profits of the lines in question as well as that recoverable from the employees residing in the area cannot be appropriated by the Government of India but should be treated, at the worst, in the same way as the revenues of the Civil and Military Station.

77. Our case may, I think, be pressed on the broad grounds of equity as already suggested by Mr. Chandrasekhara Iyer and Sir Charles Todhunter.

78. Pending final disposal of the question of retrocession of jurisdiction over Railway lands now exercised by the Government of India—which has to be urged on political grounds separately—we may request the Government of India to credit the revenue accruing in the area in question to the Proforma account of the Civil and Military Station, so that the Mysore Government may share in the surplus revenues.

79. The Railway lands in question are administered by the Civil and Military Station authorities, the laws for the time being in force in the Civil and Military Station are applicable to the area, and the proposal made above will be in keeping with these arrangements.

80. As regards the refund of revenue already realised by us, *viz.*, Rs. 24,693, the Government of India may be approached to waive the claim 'as an act of grace,' in the circumstances explained above.

B. S.
12-12-27.

81. The case in which the question of the liability to tax of incomes of officers of the Indian Institute of Science was considered, may be put up for reference.

82. What is the law under which the Government of India claim the right to tax the incomes and profits under consideration ? Does the Indian Income-tax Act XI of 1922 apply, as stated by the Government of India in para 2 of the Residency letter dated 17th October 1927, to lands within Indian States over which jurisdiction for Railway purposes has been ceded to the British Government ? If the law proposed to be enforced is the British Indian Act as applied to the Civil and Military Station, does it give the Government of India the right to take the revenue from the income-tax or does it give the Station the right to appropriate this tax ?

83. Whatever the strict legal position in regard to the scope of the jurisdiction ceded, the fact remains that, if the claim put forward by the Government of India is correct, that Government would obtain a pecuniary advantage from the cession. There is no justification for that Government to obtain an advantage of this kind and they have also disclaimed any desire to obtain such benefit.

84. I believe that the land between Bangalore and Bisanatham was required to be given by us free of cost to the late Madras Railway Company. The system of demanding free grant of land in Indian States for railway purposes has, I think, been changed. The latest order of the Government of India relating to Railway lands and the kind of jurisidiction latterly claimed over them in Indian States may be put up.

85. The Government of India state that the profits of the Railway Company are received in British India and so claim the right to tax them. But these profits, if they are received in British India, accrue in Mysore.

86. I think the only reasonable view to be taken of the cession of jurisdiction is that it is only for Railway purposes. If, however, the view that it means jurisdiction of all kinds is correct, I think it is necessary that we should take steps to have the position in this respect altered and events are also moving in this direction. It is stated to be the present policy of the Government of India to reduce even their existing powers over lands in the Indian States " to the minimum necessary for Railway purposes ". (*Vide* Residency letter dated 28th July 1926). Claims for complete retrocession of jurisdiction over railway lines have been put forward by Indian States. We have also pressed this claim in our letter of 16th August 1926. Even in the Residency letter now under consideration, the Government of India allude to the suggestion regarding the change of policy, but only contend that it cannot be applied to the present case " as the recovery of Mysore income-tax relates to a period prior to the issue of the letter containing the suggestion concerned."

87. The point involved in this case is a very important one and I think it is necessary to press for the acceptance of our view.

M. N. K.
14-12-27.

88. The file *re* the assessment of the income of officers of the Indian Institute Science is put up.

To Legal Remembrancer with compliments for favour of remarks on the points raised in the Member's minute.

B. S.
14-12-27.

89. From para 2 of the Residency letter of 17th October 1927, it is clear that the profits of the Railway Company are taxable under section 4 of the Indian Income-tax Act XI of 1922, for they are received in British India.

90. Hence Government of India have indirectly conceded the position that Act XI of 1922 has no operation over the area occupied by the Railway.

91. Under section 4, **Income-tax Act applies** to all incomes.....accruing or arising or received in **British India.**

92. In G. O. No. 791 F., dated **26th March 1918,** it is expressly stated that Frontier Agency tracts and ceded areas are included in the term "Dominions of Princes and Chiefs in India in alliance with His Majesty."

(*Vide* para-84 of my opinion and Dorasami Iyengar on Income-tax Acts, p. 14.)

93. The main grounds on which Government of Mysore claim the income-tax on the profits of the Railway running through Bangalore and Bisanatham are, first, this territory though the jurisdiction over it is ceded for Railway purposes, still forms part of Mysore territory and as such His Highness has sovereignty over it and possesses undoubted power to enforce Mysore Income-tax Regulation over that area, and secondly that since the profits of the Railway accrue or arise in Mysore, they are taxable under section 4 of Mysore Regulation, V of 1923.

94. If Mysore Government imposes a tax, the Railway Company will get a rebate in British India. The argument that, since the Indian Income-tax Act applies to the case, Mysore Government has no right to impose any tax is unsound in the face of section 4, for the income or profits is liable to be taxed either at the place where it accrues or arises or at the place where it is received.

95. Since Government of India have not purported to apply Indian Act, XI of 1922 to the area occupied by Railway and tax the income on the ground that it was accrued in that area, there is no necessity to consider the question of appropriation of the revenue either by Government of India or by Civil and Military Station.

B. N.
31-12-1927.

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9. *No. 35—148-1925, dated 3rd January 1928 from the Secretary to the Hon'ble the Resident.*

States that besides the Mysore income-tax wrongly levied on the M. & S. M. Railway Company's share of the profits, Mysore State lines, the Mysore Government have recovered income-tax from employees of the Railway residing on lands occupied by the Railway and requests that the amount thus recovered, viz., Rs. 5934-13-0 *may be credited to the Government of India.*

96. Information on the points referred to in the Member's minute of 14th December 1927 is placed in the file.

97. Besides the refund of the sum of Rs. 24,693 already asked for, the Government of India now made a further request for crediting to them the amount of Rs. 5,934-13-0 recovered as Mysore income-tax for the years 1924-25 and 1925-26 on the incomes of the Madras and Southern Mahratta Railway employees residing on Railway lands. We cannct agree to make these refunds.

98. With a view to facilitate settlement of the line of action we have to take, I have made a brief analysis of the present stage of the correspondence on this important subject and indicated below the points for consideration.

99. *I. Profits earned by the Madras and Southern Mahratta Railway in respect of the lines in Mysore Territory.*—(1) Bangalore-Bisanatham Section of the Madras Railway.

100. The Company has not accepted liability to taxation under the Mysore Income-tax Law and not furnished the return for any year.

The correspondence originated in our letter of the 10th September 1925 to the Residency urging our right to tax the income accruing in these Railway lands. Almost simultaneously, the Railway Department preferred a claim for reimbursement of the surcharge levied on traffic in this section on the ground that the levy was of the nature of taxation.

101. (2) *Assessment of profits earned by the Railway from the State lines.*—Tax was paid by the Company for four years from 1921-22 to 1924-25 and it has been withheld for subsequent years under the instructions of the Railway Board who have repudiated the liability. The Government of India say that this Government has no right to apply the Mysore Income-tax Law to the Railway lands whether in Madras-Bisanatham Section of the Madras Railway or the State lines worked by the M. & S. M. Railway Company.

102. The contention of the Government of India is apparently based on the wording of the Government of India Notification of 6th February 1896 in which the cession of the Railway lands was notified. And according to this, all laws for the time being in force in the Civil and Military Station of Bangalore shall be deemed to be in force in the aforesaid lands. The Mysore income-tax Law is not applicable to the Civil and Military Station. Full jurisdiction in the Railway lands having been ceded, it is argued that the application of the Mysore Law to the lands in question has no legislative sanction.

103. It is also stated that the profits of the Railway Company are subjected to income-tax under the British Indian Income-tax Law on the ground of their being *received* in British India.

104. The position of the Government of India in assessing the Company's profits received in their territory cannot be challenged. But these profits accrue in the Railway lands and are liable to income-tax according to the law applicable to the place of accrual, and the Government of India cannot, in fairness, appropriate to themselves the entire tax revenue. While negativing the right of the Mysore Government to enforce the Mysore Income-tax Law in the Railway lands occupied by the Company, the Government of India do not deal with the question as to what Income-tax Law is applicable for assessing the incomes accruing in the area. This point will have to be threshed out.

105. *II. Income of Railway employees residing in lands occupied by the M. & S. M. Railway.*—Tax on these incomes was recovered from the employees and paid over by the Company to the Mysore Government up to June 1926 and the payment has been withheld since, under the orders of the Railway Board. The Government of India have now asked for refund of the tax recovered for the years 1924-25 and 1925-26. Whether tax for previous years has not been paid over to us and if so, why the Government of India have not claimed for earlier years cannot be made out. However, the important issue is what right or justification has the Government of India to levy income-tax on the incomes of these employees by deduction at source and appropriate the whole of it to themselves.

106. From the tenor of the correspondence ending with the Resident's letter of the 9th April 1892, it is absolutely clear that the cession of lands was for 'Railway jurisdiction' and that the Government of India have no manner of right to tax the income accruing in these lands for Imperial purposes.

107. With the introduction of the Mysore Income-tax Law in the State, the Mysore Government have a right in equity if not in law to the tax revenue at Mysore rates in respect of incomes accruing in these lands which are comprised in the Mysore Territory and the reserve sovereignity over which undoubtedly vests in the Government. If the Mysore Income-tax Law cannot, under the existing orders, be applied to the area in question, the only alternative is that the Income-tax Law in force in the Civil and Military Station should be enforced and that the revenue realised should be made over to us or credited to the Civil and Military Station. In any case, the Government of India have no valid right to appropriate to themselves the whole of the tax revenue accruing in these lands to the exclusion of Mysore.

The points arising for consideration are the following:—

(1) Under the existing orders, what is the Income Tax Law that should be applied for assessing the income *accruing* in the Railway lands?

(2) If according to the strict legal position, the Mysore Income Tax law cannot be applied and the incomes are taxed, who is to benefit by the taxation?

(3) So far as the profits of the M. & S. M. Railway are concerned, the Government of India contend that they are taxed under the law in force in British India. These profits are subject to tax at the place of accrual if an Income Tax Law is administered in the area in question.

(4) As regards the Railway employees, the tax is presumably deducted at source from their incomes. As they are stationed in the Railway lands which are not British territory, the Government of India Law cannot strictly be applied. If the law for the time being in force in the C. & M. Station is enforced, the income-tax administration should vest in the authorities of the C. & M. Station and the revenue should accure to the Station.

(5) In any view of the case, the Mysore State cannot be deprived of its right to share in the income-tax revenue of the area in question.

108. The question of retrocession of jurisdiction on Railways will, of course, have to be pressed and we have to fight for the recognition of our full fiscal rights over Railway lands whether on the Broad gauge section or the Mysore State Railway. These are general questions to be dealt with in the Railway and Political Departments. So far as the appropriation of tax leviable in respect of income in Railway lands is concerned, the only logical position is that the Mysore Government should have the benefit of such revenue at least at Mysore rates whatever the Income-tax Law that may be applicable to the area.

109. Before a reply is sent to the Government of India, it is necessary that we should be clear on one or two points:—

(1) Under what legislative sanction is tax now levied on the income of the Railway employees?

(2) Whether these incomes are assessed by British Indian Income-tax Officers or by the authorities of the C. & M. Station?

110. A draft to the Residency asking for information is accordingly put up for approval.

2nd Member. B. S. 6-1-28.

111. Approved. M. M. I 8-1-28.

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10. *No. Pol. 795, dated 10th January 1928, to the Secretary to the Hon'ble Resident.*

Calls for information on certain points.

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11. *No. 2868, dated 20th March 1928, from the same Officer. Furnishes answers.*

112. The Residency in their reply state that the Indian Income-tax Act of 1922 is being applied in the case of the Railway employees and that the I. T. Officer, Salaries Circle, Madras, assesses them.

113. For perusal and orders. The L. R. will, if approved, be requested to examine the legal aspect of the case once again in view of what he has recorded in paras 175 and 180, and offer his opinion.

B. S.
2nd Member. 30-3-28.

114. Legal Remembrancer with compliments. A reminder has been received from the Residency which is separately under disposal.

OPINION.

I am still of opinion that the fiscal jurisdiction over the Railway lands in Mysore vests in the State and as such all income, profits or gains arising or accruing thereon is liable for Mysore income-tax.

Apparently, the Government of India have begun to apply the Indian Income-tax Act, XI of 1922 to the income of Railway employees in the Mysore State only after the end of June 1926, that is, after the present contest between the two Governments took some form. I am not aware of any notification issued by Governor-General in Council applying the Indian Act to the territory occupied by Railways. This income neither arises nor accrues nor is received in British India and Act XI of 1922 is, therefore, inapplicable and the Government of India have no right to levy tax on this income. This Act does not apply to persons who earn their profit by working and residing on lands occupied by Railways. For, the lands form part of the Mysore territory and the sovereignty over the same undoubtedly rest with His Highness. His Highness has never divested himself of this sovereignty

and the Government of India have never annexed these lands to British India. It is a well known fact that sanction of Parliament is required for the Government of India to possess any land as their own and to treat it as subject to their sovereignty. No such sanction has ever been obtained and the Government of Mysore have never ceded the sovereignty over these lands. There is no authority for the position that the power of levying taxes over the Railway lands has ever been expressly or impliedly granted to the Governor-General in Council by His Highness. And in consequence, the Governor-General in Council has no power to extend Act XI of 1922 over this area. On these grounds, we have to resist the claim strenuously so as not to allow a bad precedent being created.

I believe Sir Charles Todhunter has dealt with this question of jurisdiction about the Railway lands in his statement prepared for submission to the Committee appointed to enquire into the relationship between the Native States and the Government of India.

B. NAGAPPA,
Legal Remembrancer.

8th May 1928.

115. The Residency letter dated 17th October 1927 is pending reply. We cannot accept the view held by the Government of India and communicated in this letter.

116. The information furnished in the Residency letter, dated 20th March 1928 in reply to our enquiry dated 10th January 1928, has clarified the position to a great extent. We are told that the Income-tax Law under which the employees of the M. & S. M. Railway Company are assessed is the Income-tax Act, No. XI of 1922 and that assessment orders are passed by an Income-tax Officer in Madras. This Act applies only to British India and its enforcement in the case of assessees on Railway lands is *ultra vires* as observed by the Legal Remembrancer in his note dated 8th May 1928.

117. If it was contended that the Law applied to the Railway lands was the Income-tax Act, No. XI of 1922, as extended to the Civil and Military Station, the case would have been different as assessments should then have been made by the Income-tax Officers of the Station and the proceeds also credited to the revenues of the Station. That this is not the position is clearly stated in the Residency letter, dated 20th March 1928.

118. The Government of India contend that the profits of the M. & S. M. Railway Company are taxed by them "since they are received in British India and are taxable under the Indian Income-tax Act, No. XI of 1922." This contention overlooks the fact that the profits which we claim to tax are those accruing or arising in Mysore though received in British India and as such coming under the operation of the Mysore Income-tax Law. There is provision in our law introduced with the consent of the Government of India under which relief from double tax is given to an assessee whose profits are subject to the Income-tax Laws of both Governments (*vide* Section 10 (4) of the Mysore Income-tax Regulation).

119. It is not claimed that the profits of the M. & S. M. Railway made in Mysore come under the operation of the British Indian Income-tax Act as extended to the Civil and Military Station. If this was the position, the assessment should have been made by the income-tax authorities of the Station and the proceeds also credited to its revenues.

120. The Government of India tell us, *vide* para 2 of Residency letter dated 17th October 1927, that "the Government of Mysore have ceded full jurisdiction over Railway lands in question : they retain no fiscal rights in regard to the lands concerned." This view is opposed to what is stated to be the policy of the Government of India in regard to the scope and object of jurisdiction obtained by them over lands in Indian States for railway purposes. This policy, as stated by the Standing Committee of the Chamber of Princes, is as under :—

"In the case of Railway lines over which full civil and criminal jurisdiction has been ceded, the policy of the Government of India has been to apply to those lands only such laws as are necessary for the administration of civil and criminal justice together with the Railway, Post Office and Telegraph Acts. There are cases in which it has been found convenient to apply to such lands the laws of an adjoining British district *en bloc*, but all such laws are not enforced in those lands and fiscal laws particularly are not enforced as it is not the policy of the Government of India to raise revenue from lands which are ceded for Railway purposes. An act such as the Excise Act is, however, applied to such lands when it is required to control the consumption of, and traffic in liquor

on Railway stations, or to protect the Excise revenue of British India. A law such as an Intoxicating Drugs Law may also be enacted for such lands when experience has shown that it is necessary to prevent smuggling through the railways, as much in the interests of the States themselves as of Government. Such a measure, though fiscal is not revenue-producing, and the Government of India make no profit out of it."

121. In view of this policy, the view which the Government of India have communicated in the Residency letter dated 17th October 1927 in regard to the object and scope of the cession of jurisdiction over Railway lands in Mysore is clearly untenable and they cannot justify the appropriation of the tax levied on the incomes of employees of the Company residing on Railway lands in Mysore and of income and super-taxes on the profits of the Company attributable to its transport business in the State.

122. In the circumstances stated above, we cannot agree to refund the amounts claimed by the Government of India in the Residency letters dated 17th October 1927 and 3rd January 1928, and we have also to press our claim to enforce our own Income-tax law in respect of profits made in Mysore by the M. & S. M. Railway Company and of incomes of the employees of the Company residing on Railway lands in Mysore.

123. The settlement of this question is likely to take a long time and pending it, it is necessary to enforce our law in the usual course by requiring the Company to submit its returns and also by calling upon it to collect the tax on the salaries of its employees and make it over to us. The non-issue of notices and assessment orders has given rise to controversies in the past and such situations should not be permitted to arise again.

M. N. K.
12-5-1928.

124. This may be done.

125. We have got to take up a strong uncompromising attitude in this matter and if necessary, we should ask that the dispute be referred to arbitration. We are, I feel, sure to win in the end. Draft letter may be put up to the Residency urging our claim again.

M. M. I.
13-5-1928.
B. S.
15-5-1928.

126. Draft may be put up in consultation with Legal Remembrancer.

M. N. K.
15-5-1928.

127. To Legal Remembrancer with compliments for favour of putting up a draft.

B. S.
16-5-1928.

128. Draft is put up for consideration.

B. N.
23-5-1928.

129. I have suggested a revised draft.

M. N. K.
12-6-1928.

130 I have further slightly revised the draft. If the Member approves of it, it may issue after submission to His Highness.

M. M. I.
22-6-1928.

12. *No. Fl. 9673. To Mr. S. P. Rajagopalachari, Commissioner of Income-tax, dated 30th June 1928.*

Requests him to enforce the Mysore Incom-tax law in the usual course by requiring the company to submit its return and also by calling upon it to collect the tax due on the salaries of its employees.

Submitted to His Highness.

131. I submit herewith a final note by the First Member of Council on the subject of levy of Income-tax on the profits of the Railway lines within the State worked by the Madras and Southern Mahratta Railway Company and on the income of the employees of the said Company residing on Railway lands, for His Highness' gracious approval.

BANGALORE,
30*th June* 1928.

MIRZA M. ISMAIL,
Dewan.

Final note by the First Member of Council.

SUBJECT.—Levy of Mysore Income-tax on the profits of the Railway lines within the State worked by the Madras and Southern Mahratta Railway Company and on the income of the employees of the said Company residing on Railway lands.

132. I beg to invite reference to my note, dated 3rd January 1927 in which I reported that a communication had been addressed to the Residency urging our claim to levy income-tax on the profits of the Madras and Southern Mahratta Railway Company made from Railway lines lying within the State and on the incomes of employees of the Company residing on Railway lands. A reply has been received in answer to this communication stating that the Government of India still hold that, as full jurisdiction has been ceded over Railway lands, it is not open to us to apply our Income-tax Law over such lands. This view is not correct and we cannot accept it. It is, therefore, proposed to address another communication on this subject pointing out that the view held by the Government of India is opposed to the object with which jurisdiction over Railway lands was ceded to them and that the appropriation of income-tax realised from these lands by that Government is not fair and is not also supported by any legal authority. It is suggested in this letter that the matter may have to be referred to arbitration if the Government of India are not disposed, even after considering the present representation, to modify the view held by them. I solicit the gracious approval of His Highness for issuing this letter.

BANGALORE,
28*th June* 1928.

M. N. KRISHNA RAO,
Member of Council.

SUBJECT.

Draft letter to the Residency on the subject of levy of income-tax on the profits of the Madras and Southern Mahratta Railway Company made from Railway lines lying within the State and on the income of employees of the Company residing on Railway lands.

Order.

K. R. W.

3-7-28.

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13. *No. Pol. 18, dated 6th July 1928, to the Secretary to the Hon'ble the Resident.*

States that the Durbar are unable to agree with the views of the Government of India and requests in the circumstance stated, their views may be reconsidered, subject that should they not be disposed to modify the same the case may be referred to arbitration under the procedure laid down in Foreign Political Resolution dated, 29th October 1920.

D. O. No. C. 241—25-26.

OFFICE OF THE COMMISSIONER OF INCOME-TAX IN MYSORE,
Bangalore, 9th July 1928.

DEAR SIR,

With reference to your D. O. letter No. Fl. 9673, dated the 30th *ultimo*, suggesting that the Madras and Southern Mahratta Railway Company should be called upon to submit its returns of income and also to collect the tax due on the salaries of employees on the Bangalore-Bisanatham Section and also the Mysore State lines, I write to say that the instructions contained in your letter No. Fl. 3528, dated 8th November 1926 were communicated to the Deputy Commissioner of Income-tax, Bangalore and Mysore Cities and Taluks, for necessary action. They were reiterated again in my letter, dated 28th July 1927. The Deputy Commissioner of Income-tax, Bangalore and Mysore Cities and Taluks issued notices calling for returns of income of the Company for the years 1926-27 and 1927-28 but the Company returned the notices for the reason that the Railway Board has ordered the Company to cease to pay Income-tax to the Mysore Government.

2. As regards the employees, the Company is bound by statute to collect taxes every month under section 18 of the Mysore Income-tax Regulation and submit an annual statement in Form No. 5 to the Income-tax Officer. As the Company has repudiated the claim of the Mysore Government to the tax on the salaries of employees on the above ground and as there is no data available for the Income-tax Officers to call for returns of income, notices to individual employees have not till now been issued. I am now instructing the Income-tax Officer, Bangalore and Mysore Cities and Taluks, to call upon the Company to submit its annual return of employees and also to remit the tax that is due from the employees during the years 1926-27 and 1927-28. In case of their refusal, instructions will be issued to all the Deputy Commissioners of Income-tax within whose jurisdiction those employees are working to issue the notice calling for the return under section 34 of the Income-tax Regulation on the basis of local enquiries. This step is necessary as otherwise the employees may escape the tax. In this connection, I may state that the tax on the salaries of employees have been received up to the end of May 1926, *i.e.*, for the whole of the year 1925-26. Only the tax for the years 1926-27 and 1927-28 on the salaries of employees are due.

3. In para 3 of your letter, it is stated that non-passing of assessment orders has given rise to controversies in the past. I may point out that if assessment orders are passed in the years to which the assessment relates, the proceedings for the recovery of tax should be taken within one year from the end of the year in which assessment was made. To avoid this complication regarding limitation, it seems desirable to issue the notices alone, thereby keeping the case alive, without proceeding further and passing assessment orders. I trust that Government do not require assessment orders also to be passed. If it is their intention, I shall be obliged if it is made clear.

Yours sincerely,
S. P. RAJAGOPALACHARI.

To B. Srinivasa Iyengar, Esq., B.A., B.L., Secretary to the Government of His Highness the Maharaja of Mysore, Financial Department, Bangalore.

133. I think it is desirable to proceed somewhat cautiously in this matter. The question is a constitutional one and it is under discussion between us and the Government of India. We should not put all the provisions of the Income-tax Law in force in respect of these profits and incomes. There is another point in view of which also it is unnecessary to resort to extreme measures. Neither the Company nor its employees really escape taxation. They are taxed, but only the Government of India take the taxes levied from them. Should the question be decided in our favour, the case is not one of recovering anything from the Company or its employees, but asking the Government of India to refund to us what they have taken in the first instance. All that is required in the circumstances, whether in respect of the Company or of its employees, is simply to issue annual notices to the former in the usual course and if the Company returns them without taking any action, there the matter may stand. The order issued by the Government of India directing the Company and its employees not to pay taxes to us is not considered correct by us and we have asked them to modify it or refer the case to arbitration. If, in the meantime, we put the coercive processes of the law into force, it will be misunderstood by the Government of India and it will not also be in harmony with the alternative courses of action which we have ourselves proposed.

134. This is an important matter and a reply on the above lines to the Commissioner may be issued if it is approved by the Dewan. A copy of our last communication on this subject to the Residency may also be sent to the Commissioner for information.

M. N. K.
8-8-28.

135. I agree with the First Member. We must not force the hands of the Government of India but wait patiently for a reply. We need only keep the question alive. So far as the Company is concerned by issuing notices, etc., they may or may not be taken notice of by them. This is a case which we can only hope to win by patient endeavour rather than anything else.

M. M. I.
9-8-28.

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14. *D. O. No. C. 241. from the Commissioner of Income-tax, dated 9th August* 1928.

Intimates that the Deputy Commissioner of Income-tax for Bangalore and Mysore Cities and Taluks has called on the Railway Company to submit its scheme of income.

To the Commissioner of Income-tax Fl. 1598, dated 15th August 1928.

Forwards a copy of letter No. Pol. 18, dated 16th July 1928, sent to the Residency on the subject and states that all that is required in the case at present whether in respect of the Railway Company or of its employees is simply to issue annual notices to the former in the usual course and that when the Company returns them without taking any action, the matter may stand there.

136. Fresh draft to Residency submitted as per instructions given.

B. S.

Dewan.

4-10-1928.

D. O. No. 1599, Enc. 1.

CARLTON HOUSE,
BANGALORE.
9th October 1928.

MY DEAR SIR CHARLES,

I shall be grateful for your opinion on the accompanying draft letter to the Residency relating to the levy of the Mysore income-tax on the income of employees of the Madras and Southern Mahratta Railway Company residing on Railway lands in Mysore territory, and on the profits of that Company derived from the lines within the State worked by it. It is proposed to substitute a letter on these lines for the one already sent to the Residency. I discussed the matter with Mr. Crump, and he suggested that if we write again asking for re-consideration of the decision of the Government of India, re-inforcing arguments already adduced with some others, if possible, he would be able to support our request without going into the rights of the question. Hence the revised draft. You are at liberty, of course, to improve or recast it in any manner you think best.

Yours sincerely,
MIRZA M. ISMAIL.

PARK HOUSE, MYSORE,
17*th October* 1928.

MY DEAR MIRZA,

With reference to your D. O. letter No. 1599 of the 9th instant on the subject of the claim for taxes on Railway incomes, I find myself in somewhat of a difficulty in the absence of any reasons which induced Mr. Crump to suggest modification of the draft.

It seems to me that the letter which went in June last contains an excellent statement of the case leading up to what I regard as the absolute essential if you are to secure a settlement, namely, a demand for arbitration unless they accept your point of view, and I am afraid I must criticise the draft forwarded with your letter in that it leaves out what I regard as the most essential factor of all.

I have tried to put you up, for what it is worth, a draft in milder terms than the original intimating that you must ask them to go to arbitration unless they give way, but I am not at all sure that I have succeeded, for it is not easy to put an ultimatum of that sort in conciliatory language.

Yours sincerely,
CHARLES TODHUNTER.

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137. Our object is to make another attempt to induce the Government of India to take a reasonable view of the matter. The alternative draft suggested by Sir Charles Todhunter emphasises the claim from the point of view of our right and asks for a reference to arbitration if the Government of India are not prepared to concede the claim. Arbitration is the last remedy and what is now proposed is to make another effort to have the matter settled, if possible, without resort to arbitration. If this attempt also should fail, the remedy, of recourse, to arbitration will still be available to us. It seems to me, therefore, that in the circumstances, it is better that our present representation is in the form suggested in the draft letter sent to Sir Charles for expression of his views. I would, however, suggest one addition to this draft, *viz.*, an allusion to the policy of the Government of India on this subject as stated in the Proceedings of the Committee of the Chamber of Princes.

M. N. K.
1-1-28.

138. Mr. Crump promised me that he would support our representation if put in a proper form. I agree with the Member that it will be still open to us to ask for arbitration if the Government of India should again turn our request down.

M. M. I.
10-11-28.

139. First Member has seen the file. May the draft with the addition to para 2 proposed in my handwriting (D. F. A.) issue?

140. A D. O. letter to the Secretary to the Resident requesting that this may be substituted for the letter despatched in July (Pol. 18, dated 6th July 1928) has also to be sent.

B. S.
14-11-28

141. The letter may go over the signature of the Chief Secretary—also the D. O. requesting the Secretary to the Resident to substitute this letter for the previous one.

M. M. I.
15-11-28.

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15. *No. Pol. 526, dated 17th November 1928 to Mr. A. C. Lothian.*

Intimates that the letter now sent may be substituted for the one bearing No. Pol. 18, dated 6th July 1928.

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16. *Pol. 525, dated 17th November 1928 to the Secretary to the Hon'ble the Resident in Mysore.*

Requests him to move the Hon'ble the Resident in the circumstances explained, to the representation made in the matter of the levy of the Mysore income-tax on the income of employees of the Madras and Southern Mahratta Railway Company residing on Railway lands in Mysore.

Financial Secretary.

SUBJECT.—Levy of income-tax on the income of the employees of the M. S. M. Railway residing in Railway lands in Mysore Territory and on the profits of the Company.

We have made a representation on this subject through the Resident in November last. I mentioned the matter to the Political Secretary while I was at Delhi and he thought we had a good case-*prima facie*. I have also spoken to the Secretary (Mr. E. Burdon, Financial Department) and the Deputy Secretary (Mr. Sundaram).

M. M. I.
28-2-29.

First Member

M. N. K.
2-3-29.

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17. *To the Hon'ble Sir George Ernest Schuster, Finance Member of Council, Simla. D. O. No. 1139, dated 5th October 1929.*

Invites reference to the representation of the Mysore Government in regard to the claim of the State to the income-tax on the earnings of the Railway Companies in the State.

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18 *From the same Officer—D. O. dated 16th October 1929.*

Informs that he would take up the matter after his return to Delhi.

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19. *From the Secretary to the Hon'ble the Resident No. 9238-335—1928 dated 31st October 1929.*

States that the Government of India have come to the conclusion that until the whole case regarding Railways is considered, as affecting not only Mysore but all other States, the present position must be maintained and requests that the sums credited to the Mysore Government may be refunded.

I do not think we can agree to pay. We consider our claim to be just and the attitude of the Government of India quite unreasonable. We may, I think, say that we propose to make another representation in the matter and take our own time to decide what step we should take next and when. May be submitted to Dewan.

M. N. K.
18-12-29.

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20. *From the Comptroller—No. B. 646, dated 22nd November* 1929.

Forwards copy of a letter received from the Pay and Account Officer, Bangalore, in regard to the credit of the amount received from the M. & S. M. Railway wrongly credited to the Mysore Government.

143. The Residency have asked for the refund of the amount of tax recovered. A reply to this may be sent after the main question is disposed of..

M. N. K.
11-12-29.

144. I think this is a matter in which we may well appeal to the Secretary of State against the Government of India's decision.

146. I shall be glad if the Financial Secretary and Chief Secretary will put up a draft communication to the Secretary of State—We should contest the Government of India's decision in the most strenuous possible manner.

M. M. I.
25-12-29.

146. An interim draft reply is put up.

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21. *No. Pol. 757, dated 10th January 1930, to the Secretary to the Resident.*

States that Government propose to make another representation on the subject.

No. Fl. 4547, dated 10th January 1930, to the Comptroller.

Forwards copy of the above for information.

Financial Secy.

What has become of the letter from the Residency on the Income-tax matter

M. M. I.
13-2-30.

147. I have explained to the Dewan that *ad interim* reply has been sent to the Residency that the Durbar propose to send a further representation in this matter and that the papers will be submitted through the Chief Secy. in a couple of days.

The Dewan desired that a clear note explaining the case should be given to him for the Delhi visit.

148. Note submitted.

B. S.
19-2-30.

Dewan.

NOTE ON THE QUESTION OF INCOME-TAX IN RAILWAY LANDS.

The last communication received from the Residency on 31st October 1929 runs as follows :—

" With reference to the correspondence ending with your letter No. Pol. 525, dated the 17th November 1928 on the above subject, I am directed to say that since the Butler Committee in their Report have mentioned, in paragraph 93, receipts from Income-tax along with receipts from customs, excise and other sources, the Government of India, while not admitting that Income-tax is on the same footing as the other sources of income mentioned by the Committee, have come to the conclusion that until the whole case regarding railways is considered, as affecting not only Mysore but all other States who may be concerned, the present position must be maintained.

I am accordingly to request that the Government of Mysore will be so good as to credit to the Government of India as early as possible, the sums of Rs. 21,693 and Rs. 5,934-13-0, referred to in Major Evans Gordon's letters Nos. 10, 23 and 35, dated the 17th October 1927 and 3rd January 1928, respectively."

2. An *ad interim* reply has been sent to the Residency to the effect that a further representation will be made by the Durbar in this matter. The disposal of our claim need not await consideration of the Butler Committee's Report. Our case may be briefly set out as follows :—

3. While the Government of Mysore note with satisfaction that the Butler Committee have recognised the justice of the general claim for the transfer to the Indian States of the net revenue realised in Railway areas within the States, reference is invited to the correspondence that has already passed between the Mysore Government and the Residency on the subject of this letter.

4. Prior to 1920 there was no Income-tax levied in Mysore and no question of assessing the income earned in Railway lands arose for discussion till then. On the introduction of the Mysore Income-tax Regulation, the Commissioner of Income-tax in Mysore, addressed the Agent of the M. & S. M. Railway Company in the matter of payment of Income-tax on the profits earned by the Railway Company from the Mysore State Lines and the Bangalore-Bisanatham section of the Madras Railway which lies within the Mysore Territory. The Agent agreed to the payment of Income-tax on the profits earned by the Company from the Mysore State lines worked by it. But in regard to the Bangalore-Bisanatham section of the Broad Gauge Line of Madras which is not a State line he observed that no separate accounts were maintained. And relying on para 2 of the Railway Board's letter No. 1792 – Railway, dated 9th June 1915 he contended that the Company was not liable to pay any Income-tax of the Mysore Government in the absence of orders from the Government of India.

5. In the Durbar's Pol. No. 210, dated 19th September 1925, a communication was then addressed to the Residency for a refund by the Government of India of the Mysore share of the tax levied on the profits of the Company in respect of Broad Gauge line also from the year 1920-21. An enquiry was then made in the Residency letter No. Pol. 7965 of 29th September 1925 as to why the claim was not put forward earlier than 1925-26 and whether there were any special circumstances in justification of the delay that had occurred. The position was explained in the Durbar's letter No. Pol. 279, dated 13th October 1925.

6. In the meantime, payment was being made by the Company of Income-tax on the profits earned on the Mysore State line and also on the income of employees of the Railway residing on Railway lines within the State.

7. Residency letter No. Pol. 5687 of 11th June 1926 conveyed the opinion of the Government of India, that the Mysore Government was precluded from enforcing the Mysore Income-tax Regulation over lands in Mysore Territory occupied by the Company, as the Durbar had ceded full and exclusive jurisdiction of every kind over such area and that the Agent was in error in making the payment of Mysore tax levied on the profits of the State Lines worked by the Company for the four years from 1921-22 to 1924-25.

8. It was pointed out by this Government in reply that as the cession of jurisdiction was only for purposes connected with Railways, all rights over the ceded lands except those relating to their use for purely Railway purposes vest in the Government of His Highness. The Government of India have expressly disavowed any intention of securing the concession of jurisdiction for purposes of

revenue (*vide* Residency letter No. D. O. 139, dated 25th October 1900). In that letter, it is stated that "it is not the policy of the Government of India to exercise the fiscal rights which may be conveyed to them by a cession of full jurisdiction further than to protect British revenue and they have no desire to raise revenue for themselves in the lands to which the cession relates." The Government of India have ratified these declarations by their acts in relation to sandalwood and liquor licenses and they have also handed over the surplus revenues in the Assigned Tract of Bangalore to the Government of Mysore.

9. The Government of India maintain (*vide* Pol. No. 10523, dated 17th October 1927 , that the concessions allowed in the matter of sandalwood and liquor licenses in the Railway lines have been granted not as a matter of right but as a matter of grace, but the Durbar would be satisfied if a similar consideration be extended in regard to the appropriation of the taxes levied on the profits of the Company and on the income of their employees residing in Railway lands, especially in view of the reciprocity arrangement between the Government of India and the Government of Mysore in respect of the appropriation of Income-tax between them on the principle of accrual.

10. According to the Government of India Notification of 6th February 1896 relating to lands over which jurisdiction has been called "all laws for the time being in force in the Civil and Military Station of Bangalore shall be deemed to be in force in the aforesaid lands." If in virtue of this Notification it be held that the Income-tax Law in force in the Civil and Military Station has application in such area, the tax levied on income arising in it should be credited to the revenues of the Station and included in the calculation of the divisible surplus between the Station and the State.

11. On these considerations the Durbar venture to urge that the appropriation by the Government of India of the income and super taxes levied in respect of income and profits made on the Railway lines within the State is not justifiable or consistent with their declared policy as above stated or the nature or scope of the jurisdiction ceded.

B. S.

Financial-Secretary.

Herewith Sir George Schuster's letter (enclosure) on the subject of the claim to levy Income-tax on Railway earnings.

I have drafted reply to Sir George. Will you kindly draft replies to the various points referred to in the Departmental Note? All the papers to be submitted to First Member in the first instance.

A question to be considered is whether we should not prefer an appeal to the Secretary of State before asking for arbitration. I could discuss the matter with the India office personally and see if the Government of India's decision could not be set aside.

The Political Department would support our request for arbitration, I have reason to think.

M. M. I.,
25-8-30.

SIMLA,
August 19, 1930.

DEAR SIR MIRZA,

I am sorry to find that I have not yet sent you the promised reply after the re-examination of your claim in regard to Income-tax. I think perhaps the best thing that I can do is to send you privately the actual note given to me by the Central Board of Revenue I had asked them to re-examine the whole matter and in doing so I had written "Unless any dangerous concession of principle is involved I should like to meet the Dewan of Mysore on this particular point."

I am afraid that after examining the matter on the lines indicated in the enclosed notes from the Central Board of Revenue, I must come to the conclusion that an important question of principle *is* involved, and that there are objections to

settling it in advance of a general settlement. I hope very much that as part of such general settlement we shall get all these matters disposed of in a manner satisfactory to the States, and I am sure that you will appreciate that just now, when we are so shortly to bring the whole question under review, we must be careful about making special concessions.

Sir Mirza M. Ismail, Kt., C. I. E., O. B. E.,
Dewan of Mysore, Bangalore.

Yours sincerely,
GEORGE SCHUSTER.

Copy of Note by the Central Board of Revenue.

I confess that it appears to me that two important questions of principle are involved in this case.

(1) The general question of the effect of the cession of jurisdiction over Railway lands by a State to the Government of India. This appears to be a very complicated matter, of almost metaphysical subtlety, and it is for the Foreign and Political Department to say whether they consider that a concession to Mysore allowing them to levy Income-tax on the lines passing through their territory would be embarrassing purely *from this point of view.*

(2) The question regarded from the Income-tax point of view. Here I feel little doubt that any concession would be embarrassing. I do not know how many other instances there may be in India where British lines run through State territory. They must be very numerous. Even between here and Kalka, as I have pointed out before, the line runs (I believe) through the territory of probably more States than one. Two other instances in which the same question has actually been raised—those of Patiala and Baroda are already known to the Hon'ble Member. If we are to exempt the earnings of these Mysore lines, and the salaries of the employees living on these Railway lands, from Indian Income-tax, it can only be done legally by a Notification under section 60 of the Indian Income-tax Act. This would at once attract attention and other States would claim similar concessions.

2. I do not gather, however, that this is what the Mysore Durbar ask. They apparently do not contest our right to tax the profits of the Company at all events, since they are received in British India, but claim that they also should be allowed to tax the profits (and the salaries of the employees) because the Railway line is State territory. The Company would have to claim relief from double Income-tax, to which it would naturally object.

3. The Company might also raise objections on legal grounds to being taxed by the Mysore Durbar. After all, the question whether the Mysore Durbar can or cannot levy Income-tax in these lands is a legal one, and if we are right in holding, as the Government have held, that the Mysore Income-tax law is not in force in these lands, I am not sure whether by an executive order, we *can* allow the Durbar to enfore it in these lands. That is a question for the Foreign and Political and Legislative Departments.

4. There can be no doubt, I think, that to allow States generally to enforce their Income-tax laws on Railway lands passing through their territory (in most cases that would mean conceding the right to tax the earnings of sections of a continuous line), would bring about an intolerable position. The administrative difficulties which have been summarised elsewhere would be very great.

5. But if we concede this right in one case, and not as part of a general settlement with States generally (we have indicated elsewhere recently on what principles we think that such a settlement might equitably be made) it is difficult to see how we could refuse to concede it in other cases. The fact that the same difficulties in regard to ascertaining the profits of these lines would not arise here as elsewhere, does not affect the principle at stake.

BANGALORE,
1st September 1930.

H. 70—Encl., a Note.

Dewan's Office, dated 10th November 1930.

MY DEAR SIR GEORGE,

I write to acknowledge, with many thanks, the receipt of your letter of August 19, enclosing copy of note given to you by the Central Board of Revenue on the subject of our claim in regard to Income-tax.

It was, of course, not to be expected that that Department, especially Mr. Tottenham (this is a private letter, and I hope you will allow me to be quite frank!) will take any other view but the one he has taken. I am enclosing a note meeting, as I venture to hope to your satisfaction, his arguments against the acceptance of our claim.

The reference in the note to the Political Department rather surprises me, as I believe I am in possession of the views of that Department, who are, if I am not very much mistaken, entirely on the side of the Durbar in this matter. It is on the very ground of principle that we urge a sympathetic consideration of our claim. A valid claim does not cease to be valid simply because it might involve you in difficulties with other States. That I know was the argument that was urged when we put forward our request for a reduction of the subsidy, but what has happened actually? I do not think it is right or fair to treat all cases exactly alike irrespective of the special circumstances of any particular case.

Our request is that our claim may be decided independently of the larger question for it has really very little to do with it. Ours is a claim urged on clear and definite grounds. It has either got to be accepted or rejected on its own merits. It need not wait to come under review till the whole question is taken up.

Be that as it may, all that I really wanted to mention in this letter was that, on receiving an official reply from the Government of India, we would like either to appeal to the Secretary of State or ask for arbitration, and we hope you will not misunderstand us if such a request is made. This is pre-eminently an issue for arbitration, for it so happens that the Finance Department of the Government of India is both judge and party in this case.

I hope, however, you will allow me to say how really grateful I am for the personal interest you have taken in the matter. While I regret that you should have allowed the purely departmental view to prevail, my appreciation of your great courtesy and kindness is none the less warm and sincere.

With kindest regards.

Yours sincerely,
MIRZA ISMAIL.

DRAFT REPLY TO THE NOTE BY THE CENTRAL BOARD OF REVENUE.

NOTE.

Two important questions of principle are involved in this case :—

(1) The general question of the effect of the cession of jurisdiction over Railway lands by a State to the Government of India. This appears to be a very complicated matter, of almost metaphysical subtlety, and it is for the Foreign and Political Department to say whether they consider that a concession to Mysore allowing them to levy Income-tax on the lines passing through their territory would be embarassing purely *from this point of view.*

REPLY.

The Durbar's contention has always been that the cession of jurisdiction was only for purely Railway purposes. No other view of the cession is reasonable. All rights over the ceded lands except those relating to the use of the lands for Railway purposes vest in the Mysore Government. The Government of India have expressly disavowed any intention of securing the cession of jurisdiction for purposes of revenue. *Vide* Residency letter No. D. O. 139, dated 25th October 1909. In that letter, it is stated that, " it is not the policy of the Government of India to exercise the fiscal rights which may be conveyed to them by a cession of full jurisdiction further than to protect British Revenue and they have no desire to raise revenue for themselves in the lands to which the cession relates." The Government of India have ratified these declarations by their acceptance of the claim of the Durbar to sandalwood and excise revenue in this Railway area.

Cession of jurisdiction does not necessarily mean that the Durbar should be debarred from claiming the revenues of the territory ceded or assigned to the Government of India for any particular purpose. We have cited the instance of the Bangalore Assigned Tract, where although full jurisdiction has been explicitly transferred to the Government of India, the State gets three-fourths of the Surplus Revenue accruing in the Tract. The claim for taxing income accruing in the Railway lands is even stronger.

According to the Government of India Notification of 6th February 1896, " all laws for the time being in force in the Civil and Military Station of Bangalore shall be deemed to be in force in the aforesaid (Railway) lands." If, in view of this Notification, it be held that the Income-tax law in force in the Civil and Military Station has application in such area, the tax levied or leviable on income arising in it should be no more exempt from payment to the State than are the revenues of the Tract, in respect of which the right of the State has been recognised.

We contend that the disposal of our case should not wait for the disposal of the general question.

The Agent of the Madras and Southern Mahratta Railway Company actually paid to the Mysore Government, the Income-tax due on the profits of the Mysore State Lines for four years from 1921-22 to 1924-25 and also the Income-tax recovered from employees of the Railway residing on lands occupied by it for the years 1924-25 and 1925-26. Further

(2) The question regarded from the Income-tax point of view. Here I feel little doubt that any concession would be embarrassing ..... If we are to exempt the earnings of these Mysore lines, and the salaries of the employees living on these Railway lands, from Indian Income-tax it can only be done legally, by a Notification under Section 60 of the Indian Income-tax Act. This would at once attract attention and other States would claim similar concessions.

2. I do not gather, however, that this is what the Mysore Durbar ask. They apparently do not contest our right to tax the profits of the Company at all events, since they are received in British India, but claim that they also should be allowed to tax the profits (and the salaries of the employees) because the Railway line is State territory The company would have to claim relief from Double Income-tax, to which it would naturally object.

3. The Company might also raise objections on legal grounds to being taxed by the Mysore Durbar After all, the question whether the Mysore Durbar can or cannot levy income-tax in these lands is a legal one, and if we are right in holding, as the Government have held, that the Mysore Income-tax is not in force in these lands, I am not sure whether by an

payments have been stopped by the Company under the direction of the Government of India who have also demanded the refund of the amounts previously paid. We have pointed out in our last representation dated 24th March 1930, para 11, how the grant of Durbar's request will not be embarrassing to the Government of India *vis-a-vis* the other Indian States.

Our arguments may be summarised as follows:—

It is stated that these incomes in question are taxed under the British Indian Income-tax Act XI of 1922 on the ground that they are received in British India, but this view overlooks the fact that the profits, the Government of Mysore claim to tax are those made in the State which should therefore contribute to the revenues of the State. As stated in the note, the question of grant of exemption by a notification under Section 60 of the Indian Income-tax Act does not arise and we do not ask for it.

2. In respect of income-tax matters there is a reciprocity arrangement between the Government of Mysore and the Government of India according to which the latter have agreed that in case of businesses whose head-quarters are in British India but who have branches in Mysore, a deduction shall be made from the Indian income-tax payable on the profits of such businesses of the amount of Mysore Income-tax that will be payable on the profits made in Mysore. We claim the extension of the reciprocity arrangement to this case. If the Government of an Indian State carrying on a business or trade in British India is subject to tax, it is difficult to understand why a Company carrying on the business of railway transport in an Indian State should not be made liable to the taxation of that State. There is no valid reason why the Company should object to such an arrangement. As already stated above, the Company actually paid the tax for some years. But it was only under instructions of the Government of India, communicated in the Railway Department, that the Agent ceased to pay income-tax to the Government of Mysore in respect of the profits of the Mysore State lines and also to recover Income-tax from the employees of the Company on our behalf.

3. The Company did not in the first instance raise any legal or other objection to pay Income tax on its share of the profits of the Mysore State Lines. But for the directions of the Government of India referred to above, the Company would have continued to pay Income-tax to the Government of Mysore as it did for some years. In fact, it has been admitted by the Government of India themselves that Railway Company would not suffer financially owing to the levy of Income-tax by

executive order we *can* allow the Durbar to enforce it in these lands. That is a question for the Foreign and Political and Legislative Departments.

4. There can be no doubt, I think, that to allow States generally to enforce their Income-tax laws on Railway lands passing through their territory (in most cases that would mean conceding the right to tax the earnings of sections of a continuous line), would bring about an intolerable position. The administrative difficulties which have been summarised elsewhere would be very great.

5. But if we concede this right in one case, and not as part of a general settlement with States generally..... it is difficult to see how we could refuse to concede it in other cases. The fact that the same difficulties in regard to ascertaining the profits of these lines would not arise here as elsewhere does not affect the principle at stake.

the Mysore Government on the Company's share of the profits of the Mysore State lines. The Company's objection has therefore no bearing on the decision of this case. The matter is one for settlement between the Government of Mysore and the Government of India.

The Government of India state that it is for them to decide on the extent to which legislation should be applied to Ceded Railway lands. But even if the Indian Income-tax Law as in force in the Civil and Military Station is held applicable to the Railway lands, the Government of Mysore are entitled to the revenue accruing in the area and it would not be fair that the Government of India should appropriate the resulting revenues to their own benefit.

If pending the settlement of the general question there is any technical difficulty to apply the Mysore Income-tax Law in the Railway lands in question there ought to be no objection to the transfer to the State of the proceeds of the tax levied under any other law.

4. As admitted in the note, the Company's share of the profits of the Mysore State lines is easily ascertainable and the Agent put forward administrative difficulties in ascertaining the profits only in respect of Bangalore-Bisanatham section of the Madras Line, and even in this case it would be possible to evolve a reasonable method for determining the profits earned on this Section in Mysore Territory.

5. Mysore stands on a peculiar footing, and as already pointed out, the grant of any special treatment to her will not embarrass the Government of India *vis-a-vis* with other Indian States.

149. Draft reply to the note is put up. We had suggested in our letter of the 6th July 1928 to the Residency—*vide* para 9—that the matter might be referred to arbitration. But our representation in a revised form was despatched on 17th November 1928 and since then there has been a further reference made to the Government of India on 24th March 1930 and this is pending reply officially.

B. S.,
27-8-1930.

M. N. K.,
28-8-1930.

150. Type letter to Sir George Schuster and accompanying note for my signature.

I should like to take the necessary papers with me to England. This may perhaps follow me. I should like to bring this matter to the notice of the Secretary of State.

M. M. I.,
31-8-1930.

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22. *No. 2433—335-1928, dated 22nd March 1930, from the Secretary to the Resident.*

Requesting payment of Rs. 24,623 and Rs. 5,934-13-0 as no representation has been made.

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23. *Pol. 1043, dated 24th March 1930, to the Secretary to the Hon'ble the Resident.*

Urges the claims of the Mysore Government to Income-tax on the profits of the Company and income of employees.

Financial Secretary.

151. We must make a further representation to the Government of India in the matter of the Income-tax on Railway profits.

152. Would you kindly put up a suitable draft? Please refer to Sir Manubhai Metha's note on this subject. You will find it among the papers connected with the last meeting of the Consultative Committee.

M. M. I
19-3-1932.

153. Draft put up for consideration.

B. S.,
30-3-1932.

Submitted to His Highness.

The accompanying papers relate to the question of the right of the Mysore Government to levy Income-tax on the profits of the Madras and Southern Mahratta Railway lines in the State, and on the income of the employees of the Company residing in railway lines in the State.

2. Our claim in regard to the above matters is being pressed on the attention of the Government of India for a long time past, but they have so far not given a specific decision. In a letter dated 31st October 1929, the Residency intimated that the Government of India had "come to the conclusion that until the whole case regarding Railways is considered, as affecting not only Mysore but all other States who may be concerned, the present position must be maintained." A further representation was then addressed to the Government of India in March 1930 pointing out the special circumstances connected with this particular question and urging an immediate decision on this point without waiting for the disposal of the general question. Though no official reply has so far been sent to us, it is gathered from demi-official correspondence and my personal discussions with the officers of the Government of India that the disposal of the matter is unduly held up by the attitude of one of the Departments of the Government of India. With a view to expedite the disposal of the matter, it is proposed to address another representation on the lines indicated in the draft put up herewith which may be graciously approved.

BANGALORE,
5th April 1932.

MIRZA M. ISMAIL,
Dewan.

SUBJECT.—Draft letter to the Residency on the subject of the levy of Income-tax on the profits of the Madras and Southern Mahratta Railway lines in the State and on the income of the employees of the Company residing within the Railway lines in the State.

Order.

K. R. W.

9-4-32.

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24. *To the Secretary to the Hon'ble the Resident, No. Pol.* 1107—*P. P. dated* 12*th April* 1932.

Requests that the Durbar's representation be dealt with on its own merits and adds that they would be highly grateful for an early settlement of the question.

Pol. 210, dated 10th September 1925, from the Secretary to Government, Revenue Department, to the Secretary to the Hon'ble the Resident in Mysore, Bangalore.

I am directed to address you on the subject of the levy of Income-tax on the profits of the Broad Gauge Line of the M. & S. M. Railway Company within the Mysore Territory.

2. On the introduction of the Mysore Income-tax Regulation in 1920, the Commissioner of Income-tax addressed the Agent of the M. & S. M. Railway Company in the matter of the payment of Income-tax on the profits earned by the Railway Company from the Mysore State lines and the Bangalore-Bisanatham Section of the Madras Railway which lies within the Mysore Territory. The Agent agreed to the payment of Income-tax on the profits earned by the Company from the Mysore State lines worked by them, but in regard to the Bangalore-Bisanatham Section of the Broad Gauge line to Madras which is not a State line, he observed that no separate accounts were maintained. He further added that in para 2 of the Railway Board's letter No. 1792—Ry. of 9th June 1913 (copy enclosed for ready reference) it had been notified that the Secretary of the State in Council for India had full and exclusive jurisdiction of every kind over all the lands lying within the State specified in the schedule thereto annexed, occupied by the Railways mentioned in the said schedule, that the Bangalore-Bisanatham Section of the Bangalore-Madras line was included in that schedule, and that therefore the Company was not liable to pay any income-tax to the Mysore Government in the absence of orders from the Government of India. Sl. No. 1,

3. With reference to the Agent's observations in regard to the payment of Income-tax on the profits earned on the Bangalore-Bisanatham Section. I am to observe that the mere fact that no separate accounts are maintained for this portion of the Broad Gauge line can be no reason for non-payment of Income-tax and that, in the absence of regular and separate accounts, the profits on this section should be calculated on some fair and reasonable basis as for instance on a *pro-rata* basis according to the mileage and the total earnings of the Bangalore-Madras line. In regard to the question of jurisdiction to which the Agent makes reference and an account of which he requires the orders of the Government of India, a perusal of the schedule referred to by the Agent will show that it is a general statement including all Railway lines in Indian States, jurisdiction over which has been ceded to the Government of India, and that it includes the State-owned lines in Mysore as well as the Bangalore-Bisanatham Section of the Broad Gauge line to Madras owned by the M. & S. M. Railway Company. It will thus be apparent that there are no valid grounds to treat the latter in a manner different to that followed in the case of the former. According to the understanding in force between the Mysore Government and the Government of India is respect of the cession of jurisdiction over railway lands in the State, all railway lands in

Mysore, jurisdiction over which has been ceded to the Government of India, stand on an equal footing under the terms of the several Notifications of the Government of India issued in the matter of cession of jurisdiction over Railway lands in the State. No distinction whatever is drawn in any of these papers between lands relating to State-owned railways and lands relating to the lines owned by the M. & S. M. Railway Company. Income-tax is paid by the Company on the profits earned on the Metre Gauge lines managed by them for the State. In view of the fact that there is no difference in the nature of the jurisdiction ceded to the Government of India in the two cases, it follows that the company are bound to pay Income-tax on that portion of their profits from the Madras-Bangalore lines which represents the profits on the Bangalore-Bisanatham Section The Agent of the M. & S. M. Railway has apparently not understood the scope of the Notification of the Railway Board. I am further to add that the Company have accepted this view so far as their employees residing on the Railway lands of the Broad-Gauge Section are concerned as the Company have been recovering Income-tax from them and remitting it to the Deputy Commissioner of Income-tax for the Cities and Taluks of Bangalore and Mysore.

4. The Commissioner of Income-tax has been asked to inform the Company's Agent of the circumstances referred to above and to proceed to assess the Company both for the current year (1925-26) and for the previous year (1924-25) under Section 34 of the Mysore Income-tax Regulation.

5. As the tax due by the Company on its profits on this Section of the Railway for the years previous to those mentioned above, *viz.*, from 1920-21, the year in which the Mysore Income-tax Regulation was introduced to 1923-24 is apparently included in the tax levied by the Government of India on the entire profits of the Company, I am to request you to move the Government of India to arrange for the refund to the Mysore Government, of the portion of the tax attributable to the Company's profits in Mysore and therefore chargeable to Mysore Income-tax during those four years.

Fl. 1552—Encl., dated 10th September 1925.

Copy of the foregoing is forwarded with compliments to the Commissioner of Income-tax in Mysore for information with reference to the correspondence ending with this office letter No. R. 438—I. T. 20-20-3, dated 21st July 1925. It is requested that necessary steps be taken immediately to proceed to assess the Company with tax for the current year, and also for the year 1924-25 under Section 34 of the Income-tax Regulation and that action taken be reported to Government.

The papers of his office received with his letter No. C. 293, dated 17th June 1925 are herewith returned.

No. 7965—Encl. 148-1925, dated Bangalore, 29th September 1925, from Major K. A. G. Evans Gordon, Secretary to the Resident in Mysore. to the Secretary to the Government of Mysore, Revenue Department.

SUBJECT.—Levy of Income-tax on the profits of the Broad Gauge Line of the Madras and Southern Mahratta Railway within Mysore Lines.

Sl. No. 2. With reference to your letter No. Pol. 210—I. T. 13-25-1, dated the 10th September 1925, I am directed to state that it is not quite clear why the Mysore Government's claim to a refund by the Government of India of the taxes levied on incomes which accrued during 1920-21, 1921-22, etc., was not put forward earlier than 1925-26. I am to enquire whether there are any special circumstances in justification of the delay that has occurred.

2. I am also to request that a copy of the correspondence with the Agent of the Madras and Southern Mahratta Railway on the subject may be forwarded for reference.

No. Pol. 279—Enc., dated 13th October 1925, from the Secretary to Government, Revenue Department, to the Secretary to the Hon'ble the Resident.

Sl. No. 3. With reference to the correspondence ending with your letter No. 7965, dated 29th September 1925 in regard to the levy of Income-tax on the profits of the Broad Gauge Line of the M. & S. M. Railway within the Mysore Territory, I am directed to state that the whole question required examination of the papers relating to jurisdiction, etc., in view of the contention of the Agent of the Company that they were not liable to pay any Income-tax to the Mysore Government in the absence of orders from the Government of India, as this Section of the Bangalore-Madras line was included in the schedule annexed to Railway Board's letter No. 1792—Ry., dated 9th June 1913 specifying the lands lying within the States, over which full and exclusive jurisdiction of every kind had been ceded over to the Secretary of State. The papers connected with the question having also been mislaid, some delay has occurred in making the reference.

2. I am also to forward copies of communications received from the Agent in the matter as required, from which it will be seen that the Commissioner of Income-tax in Mysore had addressed the Agent of the Company so far back as November 1920 but could not go ahead as the Agent raised political difficulties in the matter.

3. In this connection, I am to state that what is now asked is only a refund by the Government of India of the portion of the tax attributable to company's profits in Mysore (which is chargeable to Mysore Income-tax), as the same has been included in the tax recovered by the Government of India on the *entire profits* of the Company.

No. C. 241 of 1925-26, dated Bangalore 24th November 1925, from V. R. Thyagaraja Iyer, Esq., M.A., Commissioner of Income-tax in Mysore, to B. Srinivasa Iyengar, Esq., B.A., B.L., Secretary to the Government of Mysore, Revenue Department, Bangalore.

Sl. No. 4. With reference to your Memo No. Fl. 1552, dated the 10th September 1925, I have the honour to state that the Deputy Commissioner of Income-tax, Bangalore and Mysore Cities and Taluks has assessed the Madras and Southern Mahratta Railway Company for the Broad Gauge Section (Bangalore to Bisanatham) for the year 1924-25 on an income of Rs. 58,971 calculated on the *pro rata* basis and for the Metre Gauge Section and Broad Gauge Section for the year 1925-26 on an income of Rs. 92,196 and Rs. 1,22,135 respectively or in all Rs. 2,14,331.

No. C. 241 of 1925-26, dated Bangalore, 9th June 1926, from B. Ramaswamaiya, Esq., B. A., B. L., Commissioner of Income-tax in Mysore, to C. Ranganatha Rao Saheb, Esq., B.A., B.L., Secretary to the Government of Mysore, Revenue Department, Bangalore.

Sl. No. 5. In continuation of correspondence ending with this office letter No. C. 241 of 1925-26, dated the 24th November 1925, *re* assessment of the profits of the M. & S. M. Railway Company, Ltd., Broad Gauge Section, I have the honour to state that the Chief Auditor and Accountant of the Madras and Southern Mahratta Railway, Madras has, in his letter No. 51227, dated 8th June 1926, intimated to me that in accordance with Railway Board's orders, no further recoveries in respect of Mysore Income-tax on salaries of Railway employees will be effected and that the Company will make no further payments of Income-tax and Super-tax on its share of surplus profits to the Mysore Government, as by virtue of the grant by the Government of Mysore of full civil and criminal jurisdiction to the Government of India over the railway lands in Mysore comprised in the Mysore State Lines, the Government of Mysore is precluded from enforcing the Mysore Income-tax Regulation over the said lands.

2. Copies of the Chief Auditor's letter and of its enclosure are sent herewith for information. I have acknowledged the receipt of the letter as desired by the Chief Auditor and Accountant.

3. I solicit the orders of Government for guidance and further action in the matter by this office.

Letter No. 51227, dated ... 1926, from the Chief Auditor and Accountant, Madras and Southern Mahratta Railway Co., Ltd., Park Town, Madras to the Commissioner of Income-tax in Mysore, Bangalore.

SUBJECT.—Income-tax—M. & S. M. Railway Lines passing through Mysore State.

I have the honour to forward herewith a copy of Railway Board's Orders No. 3167 F., dated 10th May 1926 to the Agent, M. & S. M. Railway and to state that, in accordance therewith, no further recoveries in respect of Mysore Income-tax on salaries of Railway employees will be effected and that this Company will make no further payments of Income-tax and Super-tax on its share of surplus profits to the Mysore Government. I would further add for your information that none of our employees, whose salaries are liable to tax, are paid in Mysore Territory as now defined. An early acknowledgment of this advice is requested.

Letter No. 3167—F., dated the 10th May 1926, from the Secretary, Railway Board, Simla, to the Agent, M. & S. M. Railway, Madras.

SUBJECT.—Income-tax—Mysore State Lines.

It has come to the notice of the Government of India that the M. & S. M. Railway Company is paying income-tax to the Government of Mysore in respect of the profits earned by the Company from the working of the Mysore State Lines and is collecting income-tax from its employees residing on railway lands in Mysore over which jurisdiction has been ceded. As by virtue of the grant by the Government of Mysore of full civil and criminal jurisdiction to the Government of India over the Railway lands in Mysore comprised in the Mysore State Lines, the Government of Mysore is precluded from enforcing the Mysore Income-tax Regulation over these lands, I am directed to request that you will take steps at once to cease to pay Income-tax to the Government of Mysore in respect of the profits of the Mysore State Lines and to cease to recover income-tax from the employees of the Madras and Southern Mahratta Railway Company on behalf of the Government of Mysore unless the employees are paid in Mysore territory.

No. 5087—Enc. 148-1925, dated Bangalore, 11th June 1926., From Major K. A. G. Evans Gordon, Secretary to the Resident in Mysore, to the Secretary to the Government of Mysore, Revenue Department.

SUBJECT.—Levy of Income-tax on the profits of the Broad Gauge Line of the Madras and Southern Mahratta Railway within Mysore Territory.

I am directed to refer to your letter No. Pol. 210—I. T. 13-25-1, dated the 10th September 1925, and to convey the reply of the Government of India on the subject.

Sl. No. 6. 2. It appears to the Government of India that, as the Mysore Government have ceded full and exclusive jurisdiction of every kind over the lands in their Territory occupied by the Madras and Southern Mahratta Railway and over all persons and things whatsoever within those lands, they are precluded from enforcing the Mysore Income-tax Regulation in such lands. The Agent, Madras and Southern Mahratta Railway, was, the Government of India state, accordingly in error (1) in permitting the Mysore Income-tax to be recovered from the employees of the Railway residing on lands occupied by the Bangalore-Bisanatham Section of the Madras Railway, where the Government of Mysore, as stated above, have no jurisdiction and their Income-tax Regulation cannot operate and (2) in agreeing to pay income-tax on the profits earned on the Mysore State lines over which full jurisdiction had been ceded to the British Government.

3. It is not, it is added, the Railway Company but the Government of India that has suffered financially owing to the levy of Income-tax by the Government of Mysore on the Company's share of the profits of the Mysore State Lines. That share, it is explained, is included in the Company's income on which British Indian Income-tax has been levied and in accordance with the mutual agreement

between the Government of India and the Mysore Government in regard to relief from double income-tax, the whole of the Mysore tax wrongly levied on the Railway Company's share of the profits of the Mysore State lines has, it is stated, been refunded or adjusted in favour of the Railway Company by the Income-tax authorities in Madras. The amounts thus wrongly refunded or adjusted in the past four years are as follows:—

		Rs.	a.	p.
1921-22	...	7,073	4	0
1922-23	...	2,803	12	0
1923-24	...	7,128	8	0
1924-25	...	7,688	0	0
Total	...	24,693	8	0

4. The Government of India wish this aspect of the question to be brought to the notice of the Mysore Government, and they request the Mysore Government to arrange to make good to the Government of India this sum of Rs. 24,693.

5. I am also to forward to the Government of Mysore a copy of a letter No. 3167—F., dated the 10th May 1926 from the Government of India in the Railway Department to the Agent, Madras and Southern Mahratta Railway Company, regarding income-tax on the Mysore State lines.

No. Pol. 555, dated 21st December 1926, from B. Nagappa, Esq., Bar-at-law, Secretary to Government, Local and Legislative Departments, to the Secretary to the Hon'ble the Resident in Mysore.

I am directed to refer to correspondence ending with your letter No. 5037, dated 11th June 1926, regarding the levy of income-tax by the Mysore Government on the profits of the lines within the State worked by the Madras and Southern Mahratta Railway Company, and on the income of the employees of the Railway residing on lands occupied by the Bangalore-Bisanatham Section of the Madras Railway, and to state as follows:— **Sl. No. 7.**

It is stated in the letter under reply that "it appears to the Government of India that as the Mysore Government have ceded full and exclusive jurisdiction of every kind over the lands in their territory occupied by the Madras and Southern Mahratta Railway and over all persons and things whatever within those lands, they are precluded from enforcing the Mysore Income-tax Regulation in such lands." The Government of Mysore consider that this view of the position is not correct. They maintain that the cession of jurisdiction was only for administrative purposes connected with railways, and that all rights over the ceded lands, except those relating to their use for purely railway purposes, vest in the Government of His Highness. The Government of India have expressly disavowed any intention of securing it for purposes of revenue—*Vide* Residency D. O. letter No. 139, dated the 26th October 1909. In this letter, the Resident disclaimed any intention of exercising fiscal rights which may be conveyed to the Government of India further than to protect British revenue. They have ratified these declarations by their acts in relation to sandalwood and liquor licenses and transfer of the surplus revenues in the Assigned Tract of Bangalore. There can be no question that in pressing this claim they are using jurisdiction secured for administrative purposes to enhance their revenue at the expense of the State which ceded the jurisdiction.

The appropriation by the Government of India of the income and super-taxes in respect of income and profits made on the Railway lines within the State is, therefore not justifiable or consistent with the nature or scope of the jurisdiction ceded.

Furthermore, I am to state that the question of retroceding to Indian States even the jurisdiction now exercised by the Government of India is under consideration. I am, in this connection, to invite reference to your letter No. 6472—184-1888 dated 28th July 1926 in which it is stated that it is under contemplation "to reduce to the minimum necessary for railway purposes" the powers now exercised by the Government of India. Any claim by the Government of India to levy, as in the case now under discussion, taxes in respect of areas over which limited

jurisdiction for railway purposes alone is now exercised, is opposed to the policy which it is proposed to pursue hereafter as indicated in your letter referred to above.

In the circumstances stated above, the Mysore Government will be much obliged if the Government of India will kindly reconsider the view expressed in your letter under reply and modify the instructions issued to the Madras and Southern Mahratta Railway Company in the Railway Board's letter No. 3167—F. dated 10th May 1926 to the Agent of the Company.

In view of the time likely to be taken up in settling this matter by correspondence with the Government of India, and with a view to prevent any claim by the Company for relief from the levy of tax on the ground that the demand for it was not made in time, the Company was requested to submit its return of income for the year 1925-26, but it has declined to do so. A copy of the Agent's letter No. B. 51227, dated 23rd November 1926 to the Deputy Commissioner of Income-tax in Bangalore is enclosed for information.

No. 10523 Enc.—148-1925, dated Bangalore, 17th October 1927, from Major K. A. G. Evans Gordon, Secretary to the Resident in Mysore, to the Secretary to the Government of Mysore, Law Department.

SUBJECT:—Levy of Income-tax on the profits of the Broad Gauge Line of the Madras and Southern Mahratta Railway within Mysore territory.

Sl. No. 8

I am directed to refer to your letter No. Pol. 555—I. T. 13-25-7, dated the 21st December 1926, and to convey the views of the Government of India on the subject.

2. The Government of Mysore have ceded full jurisdiction over the railway lands in question. They retain no fiscal rights in regard to the lands concerned. The conditions, the Government of India add, are precisely the same in the numerous other cases where British lines pass through State territory, and the Government of India have no doubt that the recovery of Mysore income-tax from these lands is entirely illegal. They have, it is true, made certain concessions to the Government of Mysore in the matter of sandalwood and liquor licenses as pointed out in your letter: but these concessions, it is explained, have been granted not as a matter of right but as a matter of grace.

The Government of India have acquired full jurisdiction over the lands in question and it is, the Government of India state, for them to decide on the extent to which legislation should be applied thereto. The argument contained in paragraph 4 of your letter to the effect that, because a certain "suggestion" (that the powers exercised by the Government of India over railway lands may be reduced to the minimum necessary for railway purposes) has been made, that suggestion constitutes a "policy which it is proposed to pursue," can, the Government of India remark, hardly be accepted, especially as the recovery of Mysore income-tax relates to a period prior to the issue of the letter containing the suggestion concerned.

The Government of India point out, moreover, that, apart from the question of jurisdiction over the territory concerned, the profits of the Railway Company, since they are received in British India, are taxable under the Indian Income-tax Act (XI of 1922).

2. In the circumstances explained, the Government of India desire that, as already requested, arrangements may be made for the adjustment of the sum of Rs. 24,693 (Rupees twenty-four thousand six hundred and ninety-three only).

No. 35—148-1925, dated Bangalore 3rd January 1928, from Major K. A. G. Evans Gordon, Secretary to the Resident in Mysore, to the Secretary to the Government of Mysore, Law Department.

SUBJECT:—Mysore income-tax recovered by the Mysore Government from the employees of the Madras and Southern Mahratta Railway Company.

I am directed to refer to the correspondence ending with my letter No. 10523—148-1925, dated the 17th October 1927.

2. It has been represented to the Government of India that besides the Mysore Income-tax wrongly levied on the Madras and Southern Mahratta Railway Company's share of the profits of the Mysore State lines, the Mysore Government have also recovered income-tax from employees of the Railway residing on lands occupied by the Railway. The amounts are:— **Sl. No. 9**

	Rs.	a.	p.
For 1924–25	2,679	5	0
For 1925–26	3,255	8	0

A detailed list is attached to this letter.

3. These sums have been allowed as a deduction from the Indian Income-tax due by the employees and the Government of India have now to recoup themselves. I am accordingly directed to request that the Mysore Government may be so good as to credit the Government of India with the sum of Rs. 5,934-13-0.

———

No. Pol. 795, dated 10th January 1928 from the Financial Secretary to Government to the Secretary to the Hon'ble the Resident in Mysore.

SUBJECT:—Refund of income-tax recovered by the Mysore Government from the employees of the Madras and Southern Mahratta Railway Company.

With reference to correspondence ending with your letter No. 35—148-1925, dated 3rd January 1928, requesting this Government to credit the Government of India with the sum of Rs. 5,934-13-0, being Mysore Income-Tax stated to have been wrongly levied on the incomes of certain employees of the M. & S. M. Railway for the years 1924-25 and 1925-26, I am directed to state that the Mysore Government will be much obliged if information be kindly furnished to them on the following points:— **Sl. No. 10**

(1) Whether Income-tax at British Indian rates is not recovered at source from the incomes of these railway employees?

(2) If so, under what law is the deduction made?

(3) By whom are the incomes of these employees assessed; whether by the Income-Tax Officers in British India or those of the Civil and Military Station.

(4) If the Civil and Military Station Income-Tax Officers assess the incomes of these employees, is the Revenue credited to the revenues of the Station?

———

No. 2868—148-1925, dated Bangalore 20th March 1928, from Major K. A. G. Evans Gordon, Secretary to the Resident in Mysore, to the Secretary to the Government of Mysore, Financial Department.

SUBJECT:—Mysore Income-tax recovered by the Mysore Government from the employees of the Madras and Southern Mahratta Railway Company.

I am directed to refer to your letter No. Pol. 795—I. T. 13-25-10, dated the 10th January 1928, in which the Mysore Government ask for information on the following points:— **Sl. No. 11**

(1) Whether Income-tax at British Indian rates is not recovered at source from the incomes of the railway employees in question.

(2) If so, under what law is the deduction made?

(3) By whom are the incomes of these employees assessed; whether by the Income-tax Officers in British India or those of the Civil and Military Station.

(4) If the Civil and Military Station Income-tax Officers assess the incomes of these employees, is the revenue credited to the revenues of the Station ?

The answers are—

(1) Yes.
(2) Under the Income-tax Act (XI of 1922).
(3) By an Income-tax Officer in Madras (Salaries Circle).
(4) Does not arise.

D. O. No. Fl. 9673, dated 30th June 1928, from the Financial Secretary to the Commissioner of Income-tax.

Please refer to correspondence ending with Mr. Ramaswamiah's letter No. C 241 of 25-26, dated 9th June 1926, *re* assessment of the profits of the M. & S. M Railway Company and of the income of the employees residing on lands occupied by the Railway. The question is still under correspondence with the Government of India.

Sl. No. 12 Pending its final settlement which is likely to take a long time it is necessary to enforce our law in the usual course by requiring the Company to submit its returns and also by calling upon it to collect the tax due on the salaries of its employees, on the Bangalore-Bisanatham Section and also on the Mysore State lines worked by the Company and make over the collection to us.

The non-issue of notices and assessment orders has given rise to controversies in the past and such situations should not be permitted to occur again.

I am to request you to take immediate action in this behalf.

No. 6355—335-1928, dated, Bangalore 5th July 1928, from A. C. Lothian, Esquire, I. C. S., Secretary to the Resident in Mysore, to the Secretary to the Government of His Highness the Maharaja of Mysore, Financial Department.

SUBJECT:—Mysore income-tax recovered by the Mysore Government from the employees of the Madras and Southern Mahratta Railway Company.

I am directed to refer to Major Evans Gordon's letter No. 35—148-1925, dated the 3rd January 1928, and to state that the Government of India would be glad to be informed whether the Mysore Government have credited them with the amount specified in paragraph 3 thereof. If this has not been done already, it is requested that necessary arrangements may kindly be made to do so as early as may be convenient.

2. The favour of an early reply is solicited.

Pol. 18, dated 6th July 1928, from the Financial Secretary, to the Secretary to the Hon'ble the Resident in Mysore, Bangalore.

I am directed to advert to correspondence ending with your letter No. 2868 148–1925, dated the 20th March 1928, relating to the levy of Mysore Income-tax on the income of employees of the Madras and Southern Mahratta Railway Company residing on railway lands in Mysore territory and on the profits of the said Company derived from the lines within the State worked by them. The Government of Mysore consider that the views communicated in your letter No 10523—148-1925, dated 17th October 1927, do not represent the correct position in regard to the object or extent of the cession of jurisdiction in question, and this communication is therefore, addressed to explain the case once again and ask for its reconsideration.

2. The view of the Government of India in regard to the cession of jurisdiction over railway lands in the State is thus expressed in the letter referred to above:—

"The Government of Mysore have ceded full jurisdiction over the railway lands in question. They retain no fiscal rights in regard to the lands concerned."

"The Government of India have no doubt, that the recovery of Mysore income-tax from these lands is entirely illegal."

"It is for them (the Government of India) to decide on the extent to which legislation should be applied thereto." **Sl. No. 13**

3. The cession of jurisdiction was admittedly for purely railway purposes, and it is only right that its object and extent should be strictly limited to the fulfilment of those purposes. Any action which has the effect of widening the scope of the cession would be both unnecessary and unfair. The Durbar contend that all rights over the lands in question, excepting only those rights which affect the use of the lands for purely railway purposes, vest in them. The Government of India have not hitherto advanced any claim to fiscal rights over those lands; on the contrary, they have expressly disavowed any intention of raising for their own benefit any revenue from them:—*vide* Residency D. O. letter No. 139, dated 26th October 1909. Any claim to fiscal rights in respect of these lands, as is now advanced, is altogether a new policy for which there seems no justification.

4. His Highness' Government believe that the policy of the Government of India in this matter is as stated in the following summary by the Standing Committee of the Chamber of Princes: (20th August 1924).

"In the case of railway lines over which full civil and criminal jurisdiction has been ceded, the policy of the Government of India has been to apply to those lands only such laws as are necessary for the administration of the civil and criminal justice, together with the Railway, Post Office and Telegraph Acts. There are cases in which it has been found convenient to apply to such lands the laws of an adjoining British District *en bloc* but all such laws are not enforced in those lands and fiscal laws particularly are not enforced, as it is not the policy of the Government of India to raise revenue from lands which are ceded for railway purposes. An Act such as the Excise Act is, however, applied to such lands when it is required to control the consumption of, and traffic in, liquor on railway stations, or to protect the excise revenue of British India. A law such as an Intoxicating Drugs Law may also be enacted for such lands when experience has shown that it is necessary to prevent smuggling through the railways, as much in the interests of the States themselves as of Government. Such a measure, though fiscal, is not revenue producing, and the Government of India make no profit out of it".

5. The cession of jurisdiction did not include the surrender of fiscal rights, nor have such rights been claimed or exercised so far. How, in spite of these facts, the Government of India now hold that they have the right to apply their own Income-tax Law to these lands or that the recovery of Mysore Income-tax from them is illegal, the Government of Mysore, are unable to understand.

6. The Law under which the income of the employees of the Madras and Southern Mahratta Railway Company residing on railway lands is assessed, is stated in your letter dated 20th March 1928 to be the Income Tax Act No. XI of 1922. It is apparently the same Act under which the profits made by the Madras and Southern Mahratta Railway Company from the lines within the State are assessed, if taxed on the ground of their accrual on railway lands. But this Act does not apply to lands in Indian States ceded for railway purposes. The Government of Mysore are not aware of the authority under which the British Indian Income-tax Law is enforced in the case of these lands.

7. It is stated in your letter dated 17th October 1927 that "apart from the question of jurisdiction over the territory concerned, the profits of the Railway Company, since they are received in British India, are taxable under the British Indian Income-tax Act XI of 1922." This contention overlooks the fact that the profits which the Government of Mysore claim to tax are those accruing or arising in the State, though received in British India, and as such coming under the operation of the Mysore Income-tax Law. There is provision in this law introduced with the consent of the Government of India under which relief from double tax is afforded to assessees whose profits are subject to the Income-tax Laws of both Governments: *vide* Section 10 of the Mysore Income-tax Regulation.

8. The Government of India state that it is for them to decide on the extent to which legislation should be applied to ceded railway lands. Apart from the question of the scope of jurisdiction, the Durbar would request the Government of India to take a larger view and to consider whether it would really be fair to apply their fiscal laws to lands situated in the State and to appropriate the resulting revenues to their own benefit.

9. In the circumstances stated above, the Durbar are unable to agree with the views of the Government of India, conveyed in your letter dated 17th October 1927, and they would request that in the light of the points urged in this letter, the Government of India may be pleased to reconsider their views. If, however, the Government of India are not disposed to modify them, it will be necessary to suggest the case being referred to arbitration under the procedure laid down in Foreign and Political Resolution dated 29th October 1920.

D. O. C. 241—25-26, Bangalore 9th August 1928, from the Commissioner of Income-tax to the Financial Secretary to Government.

Sl. No. 14

In continuation of my D.O. letter No. C. 241—25-26, dated the 7th ultimo, I write to say that the Deputy Commissioner of Income-tax, Bangalore and Mysore Cities and Taluks, called upon the M. & S. M. Railway Company to submit its return of income for the year 1928-29. A notice was issued on the 2nd July and served on the 6th idem. In reply to this, the Chief Auditor and Accountant of the aforesaid Company has again returned the notice for the reasons stated in my letter No. C. 241—25-26, dated 1st December 1926, *viz.*, that he has been instructed to cease to pay Income-tax to the Mysore Government in respect of the profits on the Mysore State Lines, etc.

2. As regards the employees working in the Company, the Assistant Commissioner of Income-tax required the Company to send its annual return of employees for the two years ended 30th June 1927 and 30th June 1928. To this, the Chief Auditor and Accountant of the Company has forwarded a nil return meaning thereby that the income of the employees on the railway lines is not liable to Mysore Income-tax. As already stated in my letter dated 7th—9th July 1928, the only course left to the Department is to request the Deputy Commissioners of Income-tax, within whose jurisdiction those employees are working, to issue notices calling for the returns of income for the two years ending with June 1928. Necessary action in this respect will be taken, if Government approve of this course. I would also request orders on the last para of my previous letter.

3. Copies of the Special Deputy Commissioner's letter and of its enclosure in the matter are herein enclosed.

Letter No. A. C. 4—28-29 dated 25th July 1928, from the Deputy Commissioner of Income-tax, Bangalore and Mysore Cities and Taluks, to the Commissioner of Income-tax in Mysore, Bangalore.

Subject.—Issue of notices to the Madras and Southern Mahratta Railway Company, Ltd., and its employees.

In continuation of the correspondence ending with my letter No. A. C. 4—28-29, dated 4th July 1928 on the above subject, I have the honour to state that notice in Form No. 6 calling for a return of income of the Madras and Southern Mahratta Railway Company, Ltd., was issued to the company on 2nd July 1928 and served on 6th July 1928 by registered post. The Chief Auditor and Accountant of the aforesaid company has again returned the notice with his No. B. 5120, dated 7th July 1928, for the reasons alleged in his letter No. B. 51227, dated 23rd November 1926 (copy of which was sent to you along with my letter No. A. C. 3—26-27, dated 26th November 1926).

As regards the issue of notice to the said company by the Assistant Commissioner of Income-tax, requiring it to send the annual returns of its employees for the two years ended 30th June 1927 and 30th June 1928, the Chief Auditor and

Accountant of the company has forwarded with his letter No. E. 60287—111, dated 20th July 1928 (a copy of which is also enclosed) a "nil" return.

Letter No. E. 60287—111—P. 1, dated 20th July 1928, from the Chief Auditor and Accountant, M. & S. M. Ry. Co., Ltd., Madras, to the Assistant Commissioner of Income-tax, Bangalore and Mysore Cities and Taluks, Bangalore.

I have the honour to forward herewith a "Nil" return for the years ended with 30th June 1927 and June 1928. As regards the return for the year ended with 30th June 1926, I would invite your attention to my No. 60320—11 of 20th July 1926 to the Deputy Commissioner of Income-tax in Mysore, Bangalore, with which it was submitted.

Copy of letter No. 60320—II, dated 23rd July 1926, from the Chief Auditor and Accountant, M. & S. M. Railway Co., Ltd., Madras, to the Deputy Commissioner of Income-tax in Mysore, Bangalore.

Re INCOME-TAX ANNUAL RETURN FOR 1925-26.

I have the honour to forward herewith Income-tax Annual Return for employees of this Railway working on M. & S. M. Lines passing through the Mysore State for the year 1925-26.

In this connection I may point out that as the salary paid to these employees is liable to British Income-tax from 1st June 1926, particulars of salary drawn by deductions made on account of Provident Fund and Income-tax from these employees up to 31st May 1926 are only included in the Return.

Please acknowledge.

D. O. No. Fl. 1598, dated 15th August 1928, from the Financial Secretary to the Commissioner of Income-tax.

With reference to correspondence ending with your D. O. letter No. C. 241—25-26, dated 9th July 1928 in regard to the assessment of the profits of the M. & S. M. Railway Company and of the income of its employees, I am desired to forward herewith a copy of letter No. Pol. 18, dated 6th July 1928 sent to the Residency on the subject, for your information.

The question, I am to say, is a constitutional one and as it is under discussion between us and the Government of India, all the provisions of the Law in force need not be put in force.

Neither the company nor its employees really escape taxation; the Government of India has been taxing them. If the question is decided in our favour, the Government of India will have to be asked to refund to us the tax they are levying. **Sl. No. 15**

All that is required in the case at present whether in respect of the Railway Company or of its employees is simply to issue annual notices to the former in the usual course and when the company returns them without taking any action, there the matter may stand. This disposes of your D. O. of 9th August 1928, also.

D. O. No. Pol. 526, dated 17th November 1928, from the Chief Secretary to Government, to Secretary to the Hon'ble the Resident in Mysore.

I am desired to invite kind reference to Mr. Srinivasa Iyengar's letter No. Pol. 18, dated the 6th July 1928 on the question of collecting income-tax on the profits of the M. & S. M. Railway Company and from the Company's employees in the Mysore Territory. The Dewan discussed this matter with the Hon'ble Mr. Crump before the latter's departure from Bangalore and it was agreed that a representation should be sent on somewhat different lines. I am accordingly to forward herewith letter No. Pol. 525, dated 17th November 1928, which may be kindly substituted for Mr. Srinivasa Iyengar's letter referred to above.

Pol. No. 525, dated 17th November 1928, from the Chief Secretary to the Government of His Highness the Maharaja of Mysore, to the Secretary to the Hon'ble the Resident in Mysore.

Sl. No. 16 I am directed to advert to correspondence ending with your letter No. 2818—148-1925, dated the 20th March 1928, relating to the levy of the Mysore income-tax on the income of employees of the Madras and Southern Mahratta Railway Company residing on the railway lands in Mysore territory, and on the profits of that Company derived from the lines within the State worked by it. The Government of Mysore desire to make a further representation in the matter for the kind consideration of the Government of India, and this communication is accordingly addressed to you.

2. The Mysore Government feel that the nature and extent of jurisdiction over the railway lands should be interpreted with reference to its real object, and in this view it seems to them only reasonable to hold that it is limited to the fulfilment of purely railway purposes. Further, the Government of India themselves have been pleased to declare that they have no intention of raising any revenue from these lands: *vide* Residency D. O. letter No. 139, dated 26th October 1909. I am also to refer for a more exact statement of the policy of the Government of India, to the summary of the Standing Committee of the Chamber of Princes on the subject dated the 20th August 1924 in which it is said "fiscal laws particularly are not in force, as it is not the policy of the Government of India to raise revenue from lands which are conceded for railway purposes." While this seems to be their policy, what is actually happening is that they are making a revenue of Rs. 15,000 or so a year from this source, and depriving the Durbar of it.

3. Cession of jurisdiction does not necessarily mean that the Durbar should be debarred from claiming a share in the revenues of the territory ceded or assigned to the Government of India for any particular purpose. I am to cite the instance of the Bangalore Assigned Tract, where although full jurisdiction has been explicitly transferred to the Government of India, the State gets three-fourths of the surplus revenue accruing in the tract. The Durbar feel that they have even a stronger claim in the case of the lands in question, which were only ceded for a limited purpose.

4. The profits of the Railway Company are, no doubt, received in British India and are, as stated in your letter, taxable under the British Indian Income-Tax Act XI of 1922, but they accrue or arise in the State. The assessee Company need not, however, pay taxes on its profits twice over as there is provision in the Mysore Income Tax Law, introduced with the consent of the Government of India, under which relief from double tax is afforded.

5. Apart from the question of jurisdiction, the Durbar would earnestly request the Government of India to take an equitable and generous view of the matter.

6. In these circumstances, the Durbar trust that the Government of India will be pleased to reconsider the matter and I am to request that the Hon'ble the Resident may kindly be moved to extend his strong support to the representation made in this matter.

D. O. No. 1139, dated Mysore 5th October 1929, from the Dewan to the Hon'ble Sir George Ernest Schuster, K.C.M.G., C.B.L., M.C., Finance Member of Council, Simla.

Sl. No. 17 I must apologise for troubling you with this letter, but my excuse is that the subject on which I am writing to you is of such great importance to the State that it is necessary that I should invoke your personal and sympathetic attention to it.

The subject I refer to is the claim of the Mysore State to the income-tax on the earnings of the Railway Companies in the State. I had a talk to Mr. Burdon on the subject when I was in Simla in August last, and I requested him to explain our point of view to you, when the opportunity came. I refrained from troubling you then, as I knew you were very busy with the Public Accounts Committee.

May I venture to hope that our representation will receive your sympathetic consideration? It has since been considerably reinforced by the recommendation

of the Butler Committee, who have stated that the claim of the States to levy income-tax on such earnings is a just one.

With kindest regards to Lady Schuster and yourself,

D. O. Letter dated October 16th 1929.

Dear Dewan Sahib,

I have to acknowledge with thanks your letter of the 5th. I will take up the matter to which you refer as soon as possible after my return to Delhi. Our office is at present in the process of movement and it is difficult to get the necessary papers. **Sl. No. 18**

Yours sincerely,
GEORGE SCHUSTER.

Amin-ul-Mulk Mirza M. Ismail, B.A., C.I.E., O.B.E.,
Dewan of Mysore State, Lake view, Mysore.

No. 9238—375-1928, dated, Bangalore, 31st October 1929, from Secretary to the Resident in Mysore, to the Chief Secretary to the Government of His Highness the Maharaja of Mysore,

SUBJECT:—Mysore income-tax levied on the profits of the Broad Gauge line of the Madras and Southern Mahratta Railway in the Mysore State and from the employees of the Railway Company residing in railway lands in the State. **Sl. No. 19**

With reference to the correspondence ending with your letter No. Pol. 525, dated the 17th November 1928, on the above subject, I am directed to say that since the Butler Committee in their Report have mentioned, in paragraph 93, receipts from income-tax along with receipts from customs, excise and other sources, the Government of India, while not admitting that income-tax is on the same footing as the other sources of income mentioned by the Committee, have come to the conclusion that until the whole case regarding railways is considered, as affecting not only Mysore but all other States who may be concerned, the present position must be maintained.

2. I am accordingly to request that the Government of Mysore will be so good as to credit to the Government of India as early as possible, the sums of Rs. 24,693 and Rs. 5,934-13-0 referred to in Major Evans Gordon's letters Nos. 10523 and 35, dated the 17th October 1927 and 3rd January 1928, respectively.

No. B. 646, dated Bangalore, 22nd November 1929, from the Comptroller to the Government of His Highness the Maharaja of Mysore, Bangalore, to the Chief Secretary to the Government of Mysore, Bangalore.

Levy of income-tax on the profits of the Broad Gauge Line of the M. & S. M. Railway in Mysore State and from the employees of the Railway Company residing in Railway lands in the State.

I have the honour to forward herewith a copy of letter No. P.B. 8—18 - 2575, dated 8th November 1929 received from the Pay and Account Officer, Bangalore enquiring when he may expect credit for the amounts of Rs. 24,693 and Rs. 5,934-13-0 referred to by the Secretary to the Resident in Mysore in his letter No. 9238-335-1928, dated 31st October 1929 addressed to you on the above subject. I have replied to say that the orders of Government in the matter are awaited. **Sl. No. 20**

Letter No. P. B. 818—2575, dated 8th November 1929, from the Pay and Account Officer, Bangalore, to the Comptroller of Mysore, Bangalore.

SUBJECT :—Levy of income-tax on the profits of the Broad Gauge Line of Madras and Southern Mahratta Railway in Mysore State and from the employees ot the Railway Company residing in Railway lands in the State.

I have the honour to invite a reference to letter No. 9238—335—1928, dated the 31st October 1929 from the Secretary to the Resident, to the Chief Secretary to the Government of Mysore (copy enclosed herewith) and to enquire when the credit for the amounts may be expected.

No. 11629, dated Bangalore, 13th December 1929, from Major G. Loch, Secretary to the Resident in Mysore, to the Chief Secretary to the Government of His Highness the Maharaja of Mysore.

SUBJECT:—Mysore income-tax levied on the profits of the Broad Gauge Line of the Madras and Southern Mahratta Railway in the Mysore State and from the employees of the Railway Company residing in Railway lands in the State..

I am directed to refer to the second paragraph of my letter No. 9238, dated the 31st October 1929, and to enquire how the question of crediting to the Government of India the sums of Rs. 24,693 and Rs. 5,934-13-0 stands.

No. Pol. 757, dated 10th January 1930, from the Financial Secretary to Government, to the Secretary to the Hon'ble the Resident in Mysore, Bangalore.

SUBJECT:—Mysore Income-tax levied on the profits of the Madras and Southern Mahratta Railway in the Mysore State and from the employees of the Company residing in Railway lands in the State.

Sl. No. 21 With reference to correspondence ending with your letter No. 11629, dated 13th December 1929, I am directed to state that Government propose to make another representation on this subject.

No. 2433—335-1928, dated Bangalore, 22nd March 1930, from Major G. Loch, Secretary to the Resident in Mysore, to the Financial Secretary to the Government of His Highness the Maharaja of Mysore.

Sl. No. 22 **SUBJECT:—Mysore income-tax levied on the profits ot the Broad Gauge Line of the Madras and Southern Mahratta Railway in the Mysore State and from the employees of the Railway Company residing in railway lands in the State.**

With reference to the correspondence ending with your letter No. Pol. 757, dated the 9th January 1930, on the above subject, I am directed to request that, as no further representation has been made, the Government of Mysore will kindly arrange, without further delay, for the adjustment of the sums of Rs. 24,693 and Rs. 5,934-13-0 referred to in Major Evans Gordon's letters No. 10523, dated the 17th October 1927, and No. 35, dated the 3rd January 1928.

No. Pol. 1044, dated 24th March 1930, from the Financial Secretary to Government, to the Secretary to the Resident in Mysore, Bangalore.

SUBJECT :—Mysore Income-tax levied on the profits of the Railway Lines worked by the M. and S. M. Railway Company and on the income of the employees of the Company residing in Railway Lands, in the State.

With reference to your letter No. 2433—335-1928, dated 22nd March 1930 on the above subject, I am directed to state that the Dewan during his recent visit to Delhi has made a personal representation to the Government of India and that an official communication will be addressed to you as early as possible.

No. Pol. 1043, dated 24th March 1930, from the Chief Secretary to Government to the Secretary to the Hon'ble the Resident in Mysore, Bangalore.

SUBJECT :—Income-tax levied on the profits of the Madras and Southern Mahratta Railway Lines in the Mysore State and that recovered from employees of the Company residing in Railway Lands in the State.

In continuation of Mr. Sreenivasa Iyengar's No. Pol. 757, dated 10th January 1930. I am directed to forward for submission to the Government of India, with the Hon'ble the Resident's support, the Durbar's further representation on the above subject. **Sl. No. 23.**

2. It is stated in your letter No. 9238 of the 31st October 1929 that "since the Butler Committee in their report have mentioned in para 93, receipts from income-tax along with the receipts from customs, excise and other sources, the Government of India have come to the conclusion that until the whole case regarding Railways is considered as affecting not only Mysore but all other States who may be concerned, the present position must be maintained."

3. While the Government of Mysore note with satisfaction that the Butler Committee have recognised the justice of the general claim for the transfer to the Indian States of the net revenue realised in Railway areas within the States, I am to invite reference to the correspondence that has already passed between the Mysore Government and the Residency on the subject of this letter.

Prior to 1920 there was no income-tax levied in Mysore and no question of assessing the income earned in Railway lands arose for discussion till then. On the introduction of the Mysore Income-Tax Regulation, the Commissioner of Income Tax in Mysore, addressed the Agent of the M. & S. M. Railway Company in the matter of payment of income-tax on the profits earned by the Railway Company from the Mysore State Lines and the Bangalore-Bisanatham Section of the Madras Railway which lies within the Mysore Territory. The Agent agreed to the payment of income-tax on the profits earned by the Company from the Mysore State Lines worked by it. But in regard to the Bangalore-Bisanatham Section of the Broad Gauge Line of Madras, which is not a State Line, he observed that no separate accounts were maintained. And relying on para 2 of the Railway Board's letter No. 1792—Ry. dated the 9th June 1913 he contended that the Company was not liable to pay any income-tax of the Mysore Government in the absence of orders from the Government of India.

In the Durbar's Pol. No. 210, dated the 10th September 1925, a communication was then addressed to you for a refund by the Government of India of the Mysore share of the tax levied on the profits of the Company in respect of Broad Gauge Line also from the year 1920-21. An enquiry was then made in your letter No. Pol. 1695 of 29th September 1925 as to why the claim was not put forward earlier than 1925-26 and whether there were any special circumstances in

justification of the delay that had occurred. The position was explained in the Durbar's letter No. Pol. 279, dated 13th October 1925.

4. In the meantime payment was being made by the Company of income-tax on the profits earned on the Mysore State Line and also on the income of employees of the Railway residing on Railway Lines within the State.

5. Your letter No. Pol. 5087 of 11th June 1926 conveyed the opinion of the Government of India that the Mysore Government was precluded from enforcing the Mysore Income Tax Regulation over lands in Mysore Territory occupied by the Company as the Durbar had ceded full and exclusive jurisdiction of every kind over such area and that the Agent was in error in making the payment of Mysore tax levied on the profits of the State Lines worked by the Company for the four years from 1921-22 to 1924-25.

6. It was pointed out by this Government in reply that as the cession of jurisdiction was only for purposes connected with Railways, all rights over the ceded lands except those relating to their use for purely railway purposes vest in the Government of His Highness. The Government of India have expressly disavowed any intention of securing the concession of jurisdiction for purposes of revenue. (*Vide* Residency D. O. letter No. 139 dated 25th October 1909). In that letter, it is stated that "It is not the policy of the Government of India to exercise the fiscal rights which may be conveyed to them by a cession of full jurisdiction further than to protect British revenue for themselves in the lands to which the cession relates." The Government of India have ratified these declarations by their acts in relation to Sandalwood and Liquor Licenses and they have also recognised the claim of the State to the surplus revenues of the Assigned Tract of Bangalore.

7. The Government of India maintain (*vide* Pol. No. 10523 dated 17th October 1927) that the concessions allowed in the matter of Sandalwood and Liquor Licenses in the Railway Lines have been granted not as a matter of right but as "a matter of grace." Without necessarily agreeing with that view, the Durbar would be satisfied if a similar consideration be extended to them in regard to this matter also, especially in view of the reciprocity arrangement existing between the Government of India and the Government of Mysore in respect of the appropriation of Income Tax between them on the principle of accrual.

8. According to the Government of India Notification of February 6, 1896 relating to lands over which jurisdiction has been ceded "all laws for the time being in force in the Civil and Military Station of Bangalore shall be deemed to be in force in the aforesaid lands." If in virtue of this Notification it be held that the Income Tax Law in force in the Civil and Military Station has application in such area, the tax levied on income arising in it should be no more exempt from payment to the State than are the revenues of that tract, in respect of which the right of the State has been recognised.

9. Having regard to all these considerations, the Durbar venture to urge that the appropriation by the Government of India of the Income and Super taxes levied in respect of income and profits made on the Railway Lines within the State is not justifiable or consistent either with their declared policy, as stated above, or with the nature or scope of the jurisdiction ceded to them.

10. While the Mysore Government would be obliged if the general question raised in the Butler Committee's report is taken up for consideration as early as possible, they apprehend that its disposal will naturally take some time, and accordingly suggest that the Government of India might favourably view the Durbar's request in respect of the particular matter now under discussion, as a provisional arrangement subject to such further alterations as may be considered necessary after the Butler Committee's Report is finally dealt with.

11. In conclusion, the Durbar wish to emphasise the fact that there is ample justification for such special treatment, as the case of Railway lands in the Mysore State is unique. So far as the Durbar are aware, there is no other block of Railway land so self-contained within a single Indian State as the Railway lands in the Mysore State, and the special treatment of the latter will not, in the opinion of the Durbar, be embarassing to the Government of India *vis-a-vis* the other Indian States.

No. Pol. 1107—P.P., dated, Bangalore, 12th April 1932, from the Chief Secretary to the Government of His Highness the Maharaja of Mysore, to the Secretary to the Hon'ble the Resident in Mysore, Bangalore.

SUBJECT:—Income-tax levied on the profits of the Madras and Southern Mahratta Railway lines in the Mysore State and that recovered from employees of the Company residing in Railway lands in the State.

I am desired to invite kind reference to my letter No. Pol. 1043, dated 24th March 1930, on the above subject, and to state that the Government of Mysore will esteem it a favour if early orders of the Government of India are obtained on the representations made in that letter.

The position of the Durbar may briefly be re-stated as follows:—

The Government of India secured jurisdiction over the railway lands in the State for purely administrative purposes, and have expressly disavowed on several occasions, (*vide* Appendix I) any intention of using such jurisdiction for the purpose of raising revenue. These declarations have been ratified by the action of the Government of India in conceding to the Durbar rights in repect of sandalwood revenue and liquor license fees. Yet, in the case of Income-tax, they have taken an attitude which is at variance with their declared policy, and which results in the railway jurisdiction being used to enhance their revenue at the expense of the State.

I am to enclose for ready reference (*vide* Appendix II) a resume of the reasons which have been assigned by, or which have possibly weighed with, the Government of India, in coming to the view they have taken of the matter, together with the Durbar's comments thereon. It will be seen that these reasons do not touch the real issue, *viz.*, whether it is equitable, and consistent with the declared intentions of the Government of India, to deny to the Mysore Durbar its share of income-tax accruing on the railway lands in question.

The final disposal of the matter has, perhaps, been deferred pending the settlement of several other questions of railway policy in relation to the States. The Durbar venture to urge that their representation may, and can conveniently, be dealt with on its own merits, as it involves no new question of policy and only calls for the application of an admitted principle. It may, also, be observed that no practical difficulty was felt in regard to the assessment of the tax, which was actually paid to the State for four years. Whatever difficulties may or may not exist with regard to other States, Mysore's claim is both unequivocal and easy of adjustment.

The Durbar would be very grateful for an early settlement of this question.

APPENDIX I.

Extracts from previous correspondence regarding the scope of cession of Railway Jurisdiction in Mysore.

I. *Extract from letter from the Government of India, Foreign Department, to the Secretary to State for India, No. 26, Political, Fort William, the 3rd March 1880.*

15. In regard to railways and telegraphs in Mysore, we have reserved power to retain the working of them in our own hands, and to assume jurisdiction over railway lands as has been done in almost all the other States of India . ...And although the Maharaja will bind himself to make over free of cost any land required for a British Railway, the

transfer of plenary jurisdiction in such land is a point for future examination upon grounds of administrative convenience.

* * * * *

III. Extract of D. O. Camp No. 139, dated the 26th October 1909, (Camp Mysore) from the Hon'ble the British Resident in Mysore, to the Dewan of Mysore.

* * * * * *

5. Even on the view of the scope of the term "full jurisdiction" which I maintain, it is not the policy of the Government of India, as I understand it, to exercise the fiscal rights which may be conveyed to them by a cession of full jurisdiction further than to protect British Revenue, and they have no desire to raise revenue for themselves in the lands to which the cession relates.

This being so, I am prepared to propose to the Durbar that arrangements should be made by the Civil and Military Station Authorities under which the State Officials will be allowed reasonable facilities to supervise the Sandal trees growing along the lines of Railway over which jurisdiction has been ceded, and to remove at their discretion, subject only to the proviso that no inconvenience or trouble is caused to the Railway Company and that trees which the latter consider likely to interfere with the working of the Railways are promptly removed as at present.

* * * * * *

12. There is no intention, however, on my part, to suggest any interference with the Durbar's enjoyment of the Excise revenue derived from the existing Railway Refreshment Rooms, marginally noted, because, for the reasons explained above, such a concession is not inconsistent with my view of the meaning of "full jurisdiction."..... .....

Bangalore City.
Tumkur.
Arsikere.
Kadur.
Harihar.

* * * * * *

Copy of letter No. 8032, dated the 21st December 1909, from the First Assistant to the Resident in Mysore, Bangalore, to the Dewan of Mysore.

I am directed to refer to the correspondence ending with Mr. Chandrasekhara Iyer's letter No. 300—Pol., dated the 30th October 1908, on the subject of the measures necessary for the protection of sandal trees growing on lands assigned for Railway purposes within the limits of the Mysore State.

2. While the Resident is not prepared to admit the claim of the Durbar to the control over the sandal trees growing along the lines of Railway over which jurisdiction has been ceded to the British Government as of right, he has no objection to the State Officials supervising the preservation of the said sandal trees and to their removing them at their discretion, subject to the condition that no inconvenience or trouble is caused to the Railway Company and that the trees which the latter consider likely to interfere with the working of the Railways are promptly removed as at present. The position has been explained to the Agent, Madras and Southern Mahratta Railway and instructions have accordingly been issued to the Collector of the Civil and Military Station of Bangalore to afford to Mysore Officers all reasonable facilities for the purpose.

Extract from the summary of the Standing Committee of the Chamber of Princes, 1924.

"In the case of railway lines over which full Civil and Criminal jurisdiction has been ceded, the policy of the Government of India has been to apply to those lands only such laws as are necessary for the administration of the Civil and Criminal Justice, together with the Railway, Post Office and Telegraph Acts. There are cases in which it has been found convenient to apply to such lands the laws of an adjoining British District *en bloc* but all such laws are not enforced in those lands and fiscal laws particularly are not enforced, as it is not the policy of the Government of India to raise revenue from lands which are ceded for railway purposes. An Act such as the Excise Act is, however, applied to such lands when it is required to control the consumption of, and traffic in, liquor on railway stations, or to protect the excise revenue of British India. A law such as an Intoxicating Drugs Law may also be enacted for such lands when experience has shown that it is necessary to prevent smuggling through the railways, as much in the interests of the States themselves as of Government. Such a measure, though fiscal, is not revenue producing, and the Government of India make no profit out of it."

APPENDIX. II.

Objections taken by the Government of India to admit the claim for levy of Mysore Income-Tax in Railway lands and the Durbar's comments thereon.

Objections raised by the Government of India.	*Replies.*
1. The general question of the effect of the cession of jurisdiction over Railway lands by a State to the Government of India is involved in the case, and the grant of a concession to Mysore to levy income-tax on the lines passing through their territory would be embarrassing from this point of view.	The Durbars' contention has always been that the cession of jurisdiction was only for purely Railway purposes. No other view of the cession is reasonable. All rights over the ceded lands except those relating to the use of the lands for railway purposes vest in the Mysore Government. The Government of India have expressly disavowed any intention of securing the cession of jurisdiction for purposes of revenue. *Vide* Residency letter No. D. O. 139, dated 25th October 1909. In that letter it is stated that "it is not the policy of the Government of India to exercise the fiscal rights which may be conveyed to them by a cession of full jurisdiction further than to protect British Revenue and they have no desire to raise revenue for themselves in the lands to which the cession relates." The Government of India have ratified these declarations by their acceptance of the claim of the Durbar to Sandalwood and excise revenue on this Railway area. Cession of jurisdiction does not necessarily mean that the Durbar should be debarred from claiming the revenues of the territory ceded or assigned to the Government of India for any particular purpose. The instance of the Bangalore Assigned Tract may be cited where, although full jurisdiction has been explicitly transferred to the Government of India, the State gets three-fourths of the Surplus Revenue

Objections raised by the Government of India

2. From the Income Tax point of view the following points arise.

(1) If the Durbar should be allowed to tax the profits (and the salaries of the employees) because the Railway line is State Territory, the M. & S. M. Railway Company will have to claim relief from Double Income-tax, to which it would naturally object.

Replies

accruing in the Tract. The claim for taxing income accruing in the Railway lands is even stronger.

The Agent of the Madras and Southern Mahratta Railway Company actually paid to the Mysore Government the income-tax due on the profits of the Mysore State Lines for four years from 1921-22 to 1924-25, and also the income-tax recovered from employees of the Railway residing on lands occupied by it for the years 1924-25 and 1925-26. Further payments have been stopped by the Company under the direction of the Government of India, who have also demanded the refund of the amounts previously paid.

The case of Railway lands in the Mysore State is unique. So far as the Durbar are aware, there is no other block of Railway land so self-contained within a single Indian State as the Railway lands in the Mysore State, and the special treatment of the latter will not, in the opinion of the Durbar, be embarrassing to the Government of India *vis-a-vis* the other Indian States.

The arguments in reply to these objections may be summarised as follows:

It is stated that the income in question are taxed under the British Indian Income-tax Act II of 1922 on the ground that they are received in British India; but this view overlooks the fact that the profits the Government of Mysore claim to tax are those made in the State, which should therefore contribute to the revenue of the State.

In respect of Income-tax matters there is a reciprocity arrangement between the Government of Mysore and the Government of India according to which the latter have agreed that in case of businesses whose headquarters are in British India but which have branches in Mysore a deduction shall be made from the Indian Income-tax payable on the profits of such businesses of the amount of Mysore Income Tax that will be payable on the profits made in Mysore. The extension of the reciprocity arrangement to this case is claimed. If the Government of an Indian State carrying on a business or trade in British India is subject to tax, it is difficult to understand why a Company carrying on the business of railway transport in an Indian State should not be made liable to the taxation of that State. There is no valid reason why the Company should object to such an arrangement. As already

Objections raised by the Government of India.	*Replies*
	stated above, the Company actually paid the tax for some years. But it was only under instructions of the Government of India, communicated in the Railway Department, that the Agent ceased to pay income-tax to the Government of Mysore in respect of the profits of the Mysore State lines and also to recover income-tax from the employees of the Company on our behalf.
(2) The Company might also raise objections on legal grounds to being taxed by the Mysore Durbar.	The Company did not in the first instance raise any legal or other objection to pay income-tax on its share of the profits of the Mysore State lines. But for the directions of the Government of India referred to above, the Company would have continued to pay income-tax to the Government of Mysore as it did for some years. Indeed, it has been admitted by the Government of India themselves that the Railway Company would not suffer financially owing to the levy of income-tax by the Mysore Government on the Company's share of the profits of the Mysore State lines. The Company's objection has, therefore, no bearing on the decision of this case. The matter is entirely one for settlement between the Government of Mysore and the Government of India.
(3) It is not possible to permit by an executive order the enforcement of the Mysore Income-tax Law in the Railway lands.	The Government of India state that it is for them to decide on the extent to which legislation should be applied to ceded Railway lands. If, pending the settlement of the general question, there is any technical difficulty in applying the Mysore Income-tax Law to Railway lands in question there ought to be no objection to the transfer to the State of the proceeds of the tax levied under any other law.
(4) To allow States generally to enforce their Income-tax laws on Railway lands passing through their territory in most cases would mean conceding the right to tax the earnings of sections of a continuous line and bring about administrative difficulties.	Admittedly the Company's share of the profits of the Mysore State Lines is easily ascertainable and the Agent put forward administrative difficulties in ascertaining the profits only in respect of the Bangalore-Bisnatham Section of the Madras line, and even in this case it would be possible to evolve a reasonable method for determining the profits earned on this section in Mysore Territory.
(5) The question can only be dealt with as part of a comprehensive settlement with Indian States generally.	Mysore stands on a peculiar footing, and as already pointed out, the grant of any special treatment to her will not embarass the Government of India *vis-a-vis* other Indian States. In any case, that cannot constitute a just ground for refusing to give Mysore what it is so clearly entitled to.

WD 1801—GPB—100—18-5-22.